

Industrial Policy: Reindustrialization Through Competition or Coordinated Action?*

James C. Miller III†

Thomas F. Walton††

William E. Kovacic†††

Jeremy A. Rabkin††††

The American economy is just now recovering from its most difficult period since the Great Depression. In the eight years following the 1973 oil embargo by the Organization of Petroleum Exporting Countries (OPEC), the average annual rate of growth in industrial production fell by nearly sixty percent, while the rate of growth in labor productivity fell by approximately seventy percent relative to the average rates of the preceding twenty five years.¹ By 1980 the annual rate of inflation, as measured by the Consumer Price Index, had reached 13.5 percent, the highest rate since 1947 and more than twice the rate in 1970;² and by 1982 the rate of unemployment had reached 9.7 percent, the highest rate since 1941

* All views expressed are strictly the authors' own and not necessarily those of the institutions with which they are affiliated. The present paper relies heavily on five addresses by Chairman Miller: "Reindustrialization Policy: Atari Mercantilism?," *Policy Report* (Cato, July 1983); "Industrial Policy: Panacea or Pandora's Box?," presented to the Commonwealth Club of California (San Francisco, Sept. 30, 1983); *Reindustrialization Through the Free Market*, 53 ANTITRUST L.J. 121 (1984); "The Case Against 'Industrial Policy,'" presented to the Cato Institute Policy Conference (Washington, Apr. 27, 1984), forthcoming in 4 CATO JOURNAL (Fall 1984); and "Why Is There No 'Industrial Policy' in America?," presented to the Kansai Federation of Economic Organizations (Osaka, Japan, May 21, 1984). We are grateful for suggestions and comments on earlier drafts by John Hilke of the Federal Trade Commission and by the Journal's editors. Any errors remain our own.

† Chairman, Federal Trade Commission.

†† Director of Microeconomic and Strategic Studies, General Motors Corp., and recently Special Advisor for Regulatory Affairs, Federal Trade Commission.

††† Attorney, Washington, D.C., and recently Attorney Advisor to Commissioner George W. Douglas, Federal Trade Commission.

†††† Professor of Political Science, Cornell University.

1. COUNCIL OF ECONOMIC ADVISERS, ECONOMIC REPORT OF THE PRESIDENT 266, 269 (1984).

2. *Id.* at 282-83; BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, HISTORICAL STATISTICS OF THE U.S., COLONIAL TIMES TO 1970, BICENTENNIAL EDITION, PART 1, at 135 (1975).

and nearly double the rate in 1970.³ In the six years following the OPEC embargo the nation's view of its economic future changed from one of seemingly boundless optimism to one of great concern. The new mood was perhaps best captured by President Carter in his famous 1979 speech on "malaise" in America.⁴

Out of these experiences came the realization that new government policies might be necessary to revive the nation's industrial base and restore the economy to its post-World War II trend of steady growth with minimal inflation and low unemployment. Very few people dispute that government should play some role in promoting industrial and economic growth; discussion today centers on the nature of government's role in formulating and implementing industrial policy. Simply stated, should it try more actively to guide and coordinate the decisions of business and labor, or should it rely primarily on decentralized competitive forces?

Advocates of a more centralized approach argue that a host of market imperfections badly distort the American economy.⁵ In their view, industrial policy is not a preference for central planning over some idealized model of laissez-faire, but rather a means of making the best of an unavoidably imperfect marketplace. Given certain inevitable distortions, government, business, and labor should participate in a cooperative effort to rationalize the distortions and bring order from chaos. Robert Reich, whose writings have played a major part in stimulating and shaping debate on industrial policy, has called for "a political forum capable of generating large-scale compromise and adaptation" which would "enable government, business, and labor to fashion explicit agreements to restructure American industry."⁶ Such spokesmen often urge the U.S. govern-

3. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 1984, at 405 (104th ed. 1983).

4. N.Y. Times, July 16, 1979, at A10, col. 1, 2 ("The symptoms of this crisis of the American spirit are all around us.").

5. See, e.g., Kuttner, *Commentary on Paul Krugman's "Targeted Industrial Policies: Theory and Evidence,"* in INDUSTRIAL CHANGE AND PUBLIC POLICY 169-76 (1983) (a symposium sponsored by the Federal Reserve Bank of Kansas City). "Microeconomically, we know that investors often strive for short-run profit-maximization that often fails to serve long-run industrial well being. . . ." *Id.* at 169.

6. Reich, *The Next American Frontier*, ATL. MONTHLY, Apr. 1983, at 98, 107. See also R. REICH, *THE NEXT AMERICAN FRONTIER* (1983); I. MAGAZINER & R. REICH, *MINDING AMERICA'S BUSINESS* (1982); Eizenstat, *Reindustrialization Through Government-Business-Labor Alliance*, 53 ANTITRUST L.J. 105 (1984); *Do Modern Times Call for an Industrial Policy? A Conversation with Herbert Stein and Lester Thurow*, PUBLIC OPINION, Aug.-Sept. 1983, at 2-9, 58-59; Kuttner, *supra* note 5, at 169, 171, 176; *Hearings on a U.S. Industrial Policy Before the Subcomm. on Economic Stabilization of the House Comm. on Banking, Finance, and Urban Affairs*, 98th Cong., 1st Sess., 340-41 (1983) (statement of Owen Bieber, President, United Automobile, Aerospace and Agricultural Implement Workers of America). Other prominent supporters of some form of tripartite cooperation and planning include AFL-CIO chairman Lane Kirkland, investment banker Felix Rohatyn, and former DuPont chairman Irving S. Shapiro. Messrs. Kirkland, Rohatyn, and Shapiro have proposed a National Industrial Policy Board consisting of leaders from business, government and labor under

ment to emulate the allegedly more cooperative, tripartite microeconomic policies of such growth-oriented nations as Japan.

Advocates of a more prominent role for decentralized market forces acknowledge that the government has an important responsibility to promote economic growth through sound macroeconomic and microeconomic policies.⁷ They fear, however, that any comprehensive effort to coordinate the decisions of private entrepreneurs and laborers would be dominated by special interests and do more harm than good.⁸ They believe that, despite its imperfections, competition is the best coordinator of business, labor, and consumer decisions—especially in a complex industrial economy.⁹ They question how successful West European and Far Eastern governments have been in fostering economic growth through programs emphasizing coordinated action.¹⁰ Finally, many advocates of the market-based approach worry about the implications of a coordinated business, labor, and government strategy for fairness, individual liberty, and the nation's political institutions.

These opposing positions, however, are not polar extremes. Cooperative or group action can sometimes coincide with intense competition. For example, there is widespread agreement that research joint ventures among otherwise independent firms can contribute to the nation's technological progress.¹¹ The nation's space exploration program illustrates how the government can achieve discrete, well-defined objectives through a centrally-coordinated mix of competition and cooperation. The Alaska pipeline provides an example of a highly successful joint venture of independent

the supervision of Congress. Various bills have been introduced to create tripartite coordination mechanisms. Congressman LaFalce, for example, has conducted extensive hearings in which he invited testimony from a wide cross section of both proponents and opponents of such plans. See, e.g., HOUSE COMM. ON BANKING, FINANCE, AND URBAN AFFAIRS, 98TH CONG., 1ST SESS., FORGING AN INDUSTRIAL COMPETITIVENESS STRATEGY 61-73 (Comm. Print 1983).

7. Representative statements of this view include Schultze, *Industrial Policy: A Solution in Search of a Problem*, CAL. MGMT. REV., Summer 1983, at 4, 13 [hereinafter cited as *A Solution in Search of a Problem*]; Schultze, *Industrial Policy: A Dissent*, 2 BROOKINGS REV. 3, 11 (1983) [hereinafter cited as *A Dissent*]; R. LAWRENCE, CAN AMERICA COMPETE? 112-15 (1984); Krugman, *Targeted Industrial Policies: Theory and Evidence*, in INDUSTRIAL CHANGE AND PUBLIC POLICY 123-55 (1983).

8. See *A Dissent*, supra note 7, at 9-10; Eads, *Commentary on Paul Krugman's "Targeted Industrial Policies: Theory and Evidence,"* in INDUSTRIAL CHANGE AND PUBLIC POLICY 157-67 (1983).

9. See, e.g., *A Solution in Search of a Problem*, supra note 7, at 11, 15; *A Dissent*, supra note 7, at 12.

10. See, e.g., *A Dissent*, supra note 7, at 6-7.

11. See, e.g., SENATE COMM. ON THE JUDICIARY, THE NATIONAL PRODUCTIVITY AND INNOVATION ACT (S. 1841), S. REP. NO. 427, 98th Cong., 2d Sess., 1-4 (1984); HOUSE COMM. ON THE JUDICIARY, JOINT RESEARCH AND DEVELOPMENT ACT OF 1984 (H.R. 5041), H.R. REP. NO. 656, 98th Cong., 2d Sess. (1984); HOUSE COMM. ON SCIENCE AND TECHNOLOGY, RESEARCH AND DEVELOPMENT JOINT VENTURE ACT OF 1983, H.R. REP. NO. 571, 98th Cong., 1st Sess. pt. 1, 8-11 (1983). See also J. Miller III, *Research Joint Ventures, Antitrust, and Industrial Innovation*, Address before the Berlin Cartel Conference (July 2, 1984).

corporations.¹² But each such program has been justified as a special exception in which substantial benefits existed beyond those which could have been captured through ordinary marketplace competition. From the time the country was founded, the U.S. economy has been organized largely according to the principle encompassed in its antitrust laws: Vigorous competition should be the predominant means for promoting a strong industrial base and stimulating long-term economic growth.

In this Article, we first discuss the historical origins of the debate over industrial policy. This discussion comprises the classical economists' critique of mercantilism, as well as the early tension in the United States between antitrust and regulatory policies, which culminated in the differing policy prescriptions of Theodore Roosevelt and Woodrow Wilson. Next, we examine the National Recovery Administration, the only comprehensive and centralized peacetime industrial policy in the history of the United States. We then consider current international experiences with "indicative planning" policies—policies that rely heavily on government guidance and industry cooperation. Finally, we assess the feasibility of adopting such policies within the unique framework of the American political system, and the implications of such a program for U.S. political institutions.

I. The Origins of the Debate Over Industrial Policy

A. *The Challenge Posed by the Classical Economists*

The first systematic, empirical studies of a centralized program of industrial policy were presented by Adam Smith and David Hume. Smith and Hume demonstrated that government attempts to coordinate the efforts of entrepreneurs almost invariably discouraged economic growth and reduced economic well-being.¹³

In particular, Smith devoted much of his classic treatise, *The Wealth of Nations*,¹⁴ to an empirical assessment of the system that he and Hume called mercantilism. This system:

endeavours, either, by extraordinary encouragements, to draw towards a particular species of industry a greater share of the capital of the society than what would naturally go to it; or, by extraordi-

12. See generally, U.S. GOV'T ACCT. OFF., LESSONS LEARNED FROM CONSTRUCTING THE TRANS-ALASKA PIPELINE (1978) (report to Congress by the U.S. Comptroller General).

13. See A. SMITH, THE WEALTH OF NATIONS (Canaan ed. 1937) (1st ed. 1776); Rotwein, *Introduction to DAVID HUME—WRITINGS ON ECONOMICS* at lxxviii-lxxxix (E. Rotwein ed. 1955) (on Hume's condemnation of domestic market-restrictions in his HISTORY OF ENGLAND).

14. See, e.g., A. SMITH, *supra* note 13, at 627-53.

Industrial Policy

nary restraints, to force from a particular species of industry some share of the capital which would otherwise be employed in it¹⁵

Smith concluded that mercantilism “retards, instead of accelerating, the progress of the society towards real wealth and greatness; and diminishes, instead of increasing, the real value of the annual produce of its land and labour.”¹⁶

Smith found two basic reasons for the failure of the industrial policies of his day: a tendency of special interests to turn government programs to their own narrow advantages,¹⁷ and a tendency of joint business efforts to result in collusion to reduce output and raise prices, especially when government willingly permits such collusion.¹⁸ According to Smith:

People of the same trade seldom meet together, even for merri-ment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices. It is impossible indeed to prevent such meetings, by any law which either could be executed, or would be consistent with liberty and justice. But though the law cannot hinder people of the same trade from sometimes assembling together, it ought to do nothing to facilitate such assemblies; much less to render them necessary.¹⁹

The first comprehensive experiment with the alternative, competitive approach to industrial policy—the founding of the American state—began in 1776, the year that Smith’s treatise was first published. Milton and Rose Friedman have observed that, from the American Revolution until about 1929, the nation enjoyed substantial economic growth and prosperity, as well as unparalleled advances of human freedoms.²⁰ Of course, government coordination and business cooperation played a role in fostering U.S. economic development—as is demonstrated by the experience with railroad land grants, agricultural research programs, and the building of canals and turnpikes.²¹ Each of these programs involved substantial

15. *Id.* at 650.

16. *Id.* at 651; see also Rotwein, *supra* note 13.

17. Smith, for example, spoke of the ability of manufacturing interests to “intimidate the legislature” and specifically to block the restoration of free trade in Britain. *Id.* at 437–38. These “[m]erchants and manufacturers are the people who derive the greatest advantage from this monopoly of the home-market.” *Id.* at 426.

18. *Id.* at 60–62.

19. *Id.* at 128.

20. M. FRIEDMAN & R. FRIEDMAN, *FREE TO CHOOSE: A PERSONAL STATEMENT* 35–37 (1980).

21. See D. NORTH, *ECONOMIC GROWTH OF THE UNITED STATES 1790–1860*, at 143 (1966); L. DAVIS, *AMERICAN ECONOMIC GROWTH* 391–93, 475–85, 495–97, 648–50 (1972); W. BROWNLEE, *DYNAMICS OF ASCENT* 228–31 (1974).

external benefits for the entire economy, however, and was thus consistent with Adam Smith's public works rationale for government intervention.²²

B. *The First Proposals for a Centrally Coordinated U.S. Policy*

The term "industrial policy" is a recent addition to the lexicon of American public affairs but, as shown by Adam Smith's discussion of mercantilism, it embraces fundamental economic issues with significant, long-lived antecedents. In several important periods in American history, moreover, the basic questions of whether government should shape industrial activity directly and how it might do so have commanded the attention of public officials, business leaders, and scholars.²³ A brief examination of the origins of the country's experience with centrally coordinated industrial policies illuminates the current debate.

Although it is possible to identify other actions of the U.S. government which foreshadowed modern industrial policy, two efforts with special significance for the present debate were begun roughly a century ago. In 1887, Congress passed the Interstate Commerce Act,²⁴ which forbade certain forms of price discrimination in rail transportation and established the Interstate Commerce Commission (ICC) with authority to regulate and oversee many aspects of the railroad industry.²⁵ As its powers were expanded over subsequent decades, the ICC eventually assumed responsibility for coordinating business activity (including the setting of rates and control of entry and exit) in several transportation sectors—first rail, and later motor carrier and water transportation.²⁶ Only three years after the

22. A. SMITH, *supra* note 13, at 681-768. According to Smith's public works rationale, government must erect and maintain certain public institutions and public works which are advantageous to society, but which would not generate enough revenue to make it profitable for an individual or small number of individuals to maintain them. Such institutions and works include those necessary for education, defense, administering justice, and facilitating commerce.

23. See, e.g., REGULATION IN PERSPECTIVE (T. McCraw ed. 1981) (collection of essays discussing the history of U.S. economic regulation); OFFICE OF SPECIAL PROJECTS, BUREAU OF COMPETITION, FEDERAL TRADE COMM'N, NATIONAL COMPETITION POLICY: HISTORIANS' PERSPECTIVES OF ANTI-TRUST AND GOVERNMENT-BUSINESS RELATIONSHIPS IN THE UNITED STATES (1981); Kovacic, *The Federal Trade Commission and Congressional Oversight of Antitrust Enforcement*, 17 TULSA L.J. 587, 602-11 (1982).

24. Interstate Commerce Act, ch. 104, 24 Stat. 379 (1887) (codified as amended in scattered sections of 49 U.S.C.).

25. Interstate Commerce Act, ch. 104, §§ 2-6, 11, 24 Stat. 379, 379-83 (1887) (codified as amended in scattered sections of 49 U.S.C.). For discussions of the origins and aims of the Interstate Commerce Act, see 1 L. SHARFMAN, THE INTERSTATE COMMERCE COMMISSION 17-90 (1931); P. MACAVOY, THE ECONOMIC EFFECTS OF REGULATION: THE TRUNKLINE RAILROAD CARTELS AND THE INTERSTATE COMMERCE COMMISSION BEFORE 1900, at 111-13 (1965); Hilton, *The Consistency of the Interstate Commerce Act*, 9 J. L. & ECON. 87 (1966).

26. Congress reiterated and expanded the ICC's authority to regulate railroads through the Elkins Act of 1903, Pub. L. No. 57-103, 32 Stat. 847, the Hepburn Act amendments of 1906, Pub. L. No. 59-337, 34 Stat. 584, and the Mann-Elkins Act of 1910, Pub. L. No. 61-218, 36 Stat. 539 (these acts are codified as amended in scattered sections of 49 U.S.C.). Collectively these measures strengthened

Industrial Policy

ICC's creation, Congress passed the Sherman Act of 1890,²⁷ which embraced what would prove to be a largely different approach toward the government's role in the market. Although they embodied a wide range of congressional and public aspirations, the Sherman Act and its antitrust progeny²⁸ rested upon a preference for market forces as a means of organizing the nation's economic life.²⁹ Thus, in a brief but important period, Congress enacted two contending models for the government's role in the economy.

Neither the Sherman Act nor the Interstate Commerce Act was the final word on industrial policy. The issue of government's proper role in shaping business behavior commanded widespread attention in the presidential election campaign of 1912. The platform of Theodore Roosevelt's Progressive Party urged that the federal government's power be used to force private industry to serve broad public goals.³⁰ Roosevelt contem-

the existing ban in the Interstate Commerce Act against rebating and price discrimination, expressly granted the Commission power to prescribe maximum rates and control rate increases, and enlarged its enforcement powers. Congress extended the ICC's regulatory authority to interstate motor and water transportation through, respectively, the Motor Carrier Act of 1935, Pub. L. No. 74-255, 49 Stat. 543 (codified as amended in scattered sections of 49 U.S.C.), and the Transportation Act of 1940, Pub. L. No. 76-785, 54 Stat. 898 (codified as amended in scattered sections of 49 U.S.C.).

27. Sherman Antitrust Act, ch. 647, §§ 1-6, 8, 26 Stat. 209-10 (1890) (current version at 15 U.S.C. §§ 1-7 (1982)).

28. The Sherman Act's progeny include the Clayton Act, ch. 323, §§ 1-10, 38 Stat. 730-34 (1914) (current version at 15 U.S.C. §§ 12-20 (1982)); and the Federal Trade Commission Act, ch. 311, §§ 1-11, 38 Stat. 717-19 (1914) (current version at 15 U.S.C. §§ 41-58 (1982)). For a further discussion of the FTC Act, see *infra* text accompanying notes 57 to 73.

29. For a recent discussion of the goals of the Sherman Act and a summary of the literature analyzing the objectives of American antitrust legislation, see Lande, *Wealth Transfers as the Original and Primary Concern of Antitrust: The Efficiency Interpretation Challenged*, 34 HASTINGS L.J. 65 (1982). The public mood that spurred congressional moves in the late 19th and early 20th centuries to redress monopoly is discussed in R. HOFSTADTER, *THE AGE OF REFORM* 213-69 (1955); H. THORELLI, *THE FEDERAL ANTITRUST POLICY* 54-163, 235-368 (1955); S. HAYS, *THE RESPONSE TO INDUSTRIALISM 1885-1914*, at 4-93 (1957); R. WIEBE, *THE SEARCH FOR ORDER 1877-1920*, at 1-163 (1967).

30. A. LINK, *WOODROW WILSON AND THE PROGRESSIVE ERA* 18-21 (1954); R. HOFSTADTER, *supra* note 29, at 249-54. Two major works helped develop Roosevelt's thinking on these issues. The first was H. CROLY, *THE PROMISE OF AMERICAN LIFE* (1909). On Croly's significance to Roosevelt's thinking, see A. LINK, *supra* at 18-19, and E. GOLDMAN, *RENDEVOUS WITH DESTINY* 146-65 (1955). Regarded by many historians as the philosophical foundation for the early 20th century progressive movement, Croly's book sought to overcome the historical perception that equated a Hamiltonian policy of government intervention with aristocracy and special privilege. This attitude, he argued, had inhibited the creation of national policies to achieve Jeffersonian, or democratic, ends. To reach these goals, the country needed a "new nationalism" in which the federal government would assume an active role in changing economic and social conditions.

The second publication was C. VAN HISE, *CONCENTRATION AND CONTROL: A SOLUTION OF THE TRUST PROBLEM IN THE UNITED STATES* (1912). Van Hise believed economic concentration was predetermined by the evolution of modern business. In his view, strategies designed to arrest this process through antitrust enforcement were either futile or counterproductive. Nonetheless, he believed administrative control of the products of this evolutionary trend was essential: "[I]f we allow concentration and cooperation, there must be control in order to protect the people, and adequate control is only possible through the administrative commission." *Id.* at 278. On Roosevelt's reliance on Van Hise's view, see A. SCHLESINGER, *THE CRISIS OF THE OLD ORDER 1919-1933*, at 22 (1957).

plated creating a federal agency with authority to regulate virtually all major aspects of corporate activity. Such a body would have established hours, wages, and other conditions of labor, set maximum prices for goods produced by firms with "dominant" positions in their industries, compelled the publication of company accounts, controlled the issuance of securities, and investigated business activity in general.³¹ His system would have tolerated the level of corporate growth needed to achieve the benefits of large-scale production, but would have ensured that industry serve specific public ends.

To his Democratic Party opponent, Woodrow Wilson, Roosevelt's program seemed perilous. Wilson reasoned that if government began to tell business leaders how to run their businesses, business interests would "capture the government, in order not to be restrained too much by it."³² Rather than accept what he called an "avowed partnership between the government and the trusts,"³³ Wilson proposed a reduction in tariffs and greater reliance upon antitrust enforcement to secure competition.³⁴ This competition would in turn stimulate superior performance. The prevention of monopoly, Wilson argued, would guarantee that "the limitations on private enterprise shall be removed, so that the next generation of youngsters, as they come along, will not have to become protégés of benevolent trusts, but will be free to go about making [of] their own lives what they will"³⁵

To many observers, the contending views of Wilson and Roosevelt reflected a sharp philosophical split over government's proper role in influencing economic activity.³⁶ Historian George Mowry has noted that "one school cherished the competitive system with its individual values and

31. Roosevelt, *The Trusts, the People, and the Square Deal*, 99 THE OUTLOOK 649 (1911). During his presidency Theodore Roosevelt had acquired a reputation as a "trustbuster" because of several major Sherman Act prosecutions, including his Administration's successful effort to dissolve the Northern Securities Company, a holding company for three of the country's larger railroads. See *Northern Securities Co. v. United States*, 193 U.S. 197 (1904). Over time, however, Roosevelt became increasingly disenchanted with the Sherman Act as a tool for government economic regulation. By the time of America's entry into World War I, he publicly had turned against the statute. See T. ROOSEVELT, *THE FOES OF OUR OWN HOUSEHOLD* 122 (1917).

32. W. WILSON: *THE NEW FREEDOM* 201-02 (1913). Wilson's economic thinking drew heavily upon the views of Louis Brandeis, whom Wilson first met in August 1912. "[I]t was Brandeis," Link writes, "who clarified Wilson's thought and led him to believe the most vital question confronting the American people was preservation of economic freedom in the United States. Brandeis taught, and Wilson agreed and reiterated in his speeches, that the main task ahead was to provide the means by which business could be set free from the shackles of monopoly and special privilege." A. LINK, *supra* note 30, at 20-21.

33. W. WILSON, *supra* note 32, at 202.

34. See, A. LINK, *WILSON: THE NEW FREEDOM* 178, 241 (1956).

35. W. WILSON, *supra* note 32, at 222.

36. See, e.g., G. MOWRY, *THE ERA OF THEODORE ROOSEVELT 1900-1912*, at 57 (1958); A. LINK, *supra* note 30, at 18-21 (1954); J. BLUM, *WOODROW WILSON AND THE POLITICS OF MORALITY* 59-62 (1956).

Industrial Policy

feared the powerful state; the other welcomed concentrated power whether in industry or politics, looked to a paternalistic state staffed by an educated elite for leadership, and depreciated individualism.”³⁷

After his victory in the general election, Wilson swiftly moved to implement the chief elements of his economic program. In 1913 he secured congressional approval of the Underwood Tariff Act,³⁸ which produced the first substantial tariff reductions since the Civil War. In 1914 Wilson asked Congress to augment the Sherman Act’s broad provisions with a roster of specific illegal practices and to establish a new trade commission with advisory, investigatory, and prosecutorial powers in the antitrust field.³⁹ Congress ultimately approved Wilson’s two antitrust initiatives as the Clayton and Federal Trade Commission Acts, but engaged in extensive debate about the new Commission’s policymaking function. In particular, the legislators debated whether the agency should promote competition or, alternatively, should become the engine for comprehensive regulation envisioned by Roosevelt and his supporters in the 1912 campaign.⁴⁰

Congress endorsed the former of these two models in establishing the Federal Trade Commission.⁴¹ The agency’s new “regulatory” role would be narrow. The Commission would investigate, publicize, and remedy market failures that hindered the competitive process.⁴² It would not, however, perform the comprehensive oversight urged in some of Roosevelt’s proposals for federal regulation.

Notwithstanding its considerable legislative success, Wilson’s “New Freedom” economic program drew a harsh assessment from observers

37. G. MOWRY, *supra* note 36, at 57.

38. Pub. L. No. 63–16, ch. 16, 38 Stat. 114 (1913) (current version at 19 U.S.C. §§ 128, 130, 131 (1982)). The battle for tariff reductions provided a stern test of Wilson’s market-oriented convictions. Congressional consideration of the Underwood bill stimulated an unprecedented lobbying campaign, as representatives of interests shielded by the tariff crowded the nation’s capital. The spectacle outraged Wilson, who said Washington was so besieged by lobbyists that “a brick couldn’t be thrown without hitting one of them.” A. LINK, *supra* note 30, at 41. “It is of serious interest to the country,” Wilson declared soon afterwards, “that the people at large should have no lobby and be voiceless in these matters, while great bodies of astute men seek to create an artificial opinion and to overcome the interests of the public for their private profit.” N.Y. Times, May 27, 1913, at 1, col. 1, *quoted in* A. LINK, *supra* note 30, at 41.

39. See, A. LINK, *supra* note 30, at 436–42.

40. See, e.g., 51 CONG. REC. H9538–611 (1914) (debates over the Clayton Act); 51 CONG. REC. S11,870–876 (debates over bill to establish the Federal Trade Commission). See also A. LINK, *supra* note 30, at 68–73 (describing the opposition of various groups in Congress to the Clayton and Federal Trade Commission bills.)

41. S. REP. NO. 597, 63d Cong., 2d Sess. 10 (1914); see also T. BLAISDELL, THE FEDERAL TRADE COMMISSION 1–2 (1932).

42. Federal Trade Commission Act, ch. 311, §§ 5–16, 38 Stat. 717, 719 (1914) (current version at 15 U.S.C. §§ 45–56 (1982)).

such as Walter Lippmann. Antitrust enforcement and other competitive policies, Lippmann wrote, foolishly obstructed modern industrial progress:

If the anti-trust people really grasped the full meaning of what they said, and if they really had the power or the courage to do what they propose, they would be engaged in one of the most destructive agitations that America has known. They would be breaking up the beginning of a collective organization, thwarting the possibility of coöperation, and insisting upon submitting industry to the wasteful, the planless scramble of little profiteers. They would make impossible any deliberate and constructive use of our natural resources, they would thwart any effort to form the great industries into coordinated services, they would preserve commercialism as the undisputed master of our lives, they would lay a premium on the strategy of industrial war,—they would, if they could.⁴³

The crucial failing of these “anti-trust people,” Lippmann concluded, was that they never saw “the possibilities of organized industries.”⁴⁴

II. The First American Experiments

Lippmann’s caustic evaluation of competition as the core principle of economic organization accompanied his recommendation that business and government join in a cooperative venture to direct the economy.⁴⁵ During the next two decades, the federal government tried three major experiments with such cooperative programs: the War Industries Board, the “associationalist” policies of Herbert Hoover, and the National Recovery Administration. Viewed from the standpoint of consumer welfare, the two peacetime experiments were dismal failures.

A. *The War Industries Board*

America’s entry into World War I in 1917 presented the first opportunity to pursue a cooperative policy of the type proposed by Lippmann. Central planning and coordination strategies received unprecedented attention during the American war mobilization effort.⁴⁶ Through the War Industries Board (WIB), the federal government exercised sweeping

43. W. LIPPMANN, *DRIFT AND MASTERY* 124 (1914).

44. *Id.*

45. *Id.* at 138–41. Lippmann notes that the men of the new generation “have the vast opportunity of introducing order and purpose into the business world, of devising administrative methods by which the great resources of the country can be operated on some thought-out plan.” *Id.* at 141.

46. See Himmelberg, *The War Industries Board and the Antitrust Question in November 1918*, 52 J. AM. HIST. 59 (1965) [hereinafter cited as “Himmelberg, *The War Industries Board*”]; Cuff, *Business, the State, and World War I: The American Experience*, in *THE ORDEAL OF TWENTIETH-CENTURY AMERICA*, INTERPRETIVE READINGS 48 (J. Schwartz ed. 1974).

Industrial Policy

power over the nation's economy, controlling production priorities, resource allocation, and pricing.⁴⁷ The WIB sanctioned and promoted cooperative business efforts that during peacetime could have resulted in criminal violations of the Sherman Act.⁴⁸

The war mobilization effort produced the country's first major experiment in comprehensive government economic planning. As historian Eric Goldman describes it, this experiment convinced many leaders in business, government, and academia that the WIB model of government-business cooperation deserved a trial in peacetime as well:

Many of the dollar-a-year men went back to their fifty-thousand-dollar-a-year jobs with an idea buzzing in their heads. Perhaps their decades-old battle for "free competition" and against "government in business" had not been wise. They had been given striking proof that federal activity need not be anti-business, and they had seen the advantages that could come from joint operations under federal aegis.⁴⁹

To Bernard Baruch, who headed the WIB, the experience with central control had shown antitrust law to be an anachronism.⁵⁰ The WIB, he noted, had enabled businessmen to enjoy "the tremendous advantages, both to themselves and to the general public, of combination, of cooperation and common action with their natural competitors."⁵¹

B. Hoover's Associationalism

At the war's conclusion, many WIB veterans sought to apply the lessons of the mobilization effort to the peacetime economy.⁵² Some business leaders tried, without success, to obtain a continuing, formal relaxation of antitrust enforcement.⁵³ In addition, much effort went into the develop-

47. W. LEUCHTENBURG, *THE PERILS OF PROSPERITY 1914-1932*, at 39-40 (1958); A. SCHLESINGER, *supra* note 30, at 37-38. See generally B. BARUCH, *AMERICAN INDUSTRY IN THE WAR* (1941) (a compilation on industrial mobilization for war including Baruch's 1921 Report of the War Industries Board).

48. Himmelberg, *The War Industries Board*, *supra* note 46, at 60-62.

49. E. GOLDMAN, *supra* note 30, at 237. This feeling was especially pronounced among adherents to the Rooseveltian brand of progressivism. Donald Richberg, who worked in Roosevelt's 1912 campaign and who would become head of the National Recovery Administration in the 1930's, observed: "The truth is that no man of any political intelligence and economic vision has been able to defend the existing economic order since the World War laid bare its utter inadequacy and its insane consequences." D. RICHBERG, *TENTS OF THE MIGHTY* 81-82 (1930).

50. B. BARUCH, *supra* note 47, at 104-07. Baruch called the antitrust laws "a moderately ambitious effort to reduce by Government interference the processes of business so as to make them conform to the simpler principles sufficient for the conditions of a bygone day." *Id.* at 104.

51. *Id.* at 105.

52. Himmelberg, *The War Industries Board*, *supra* note 46, at 60-62.

53. See *id.* at 62-63. See generally R. HIMMELBERG, *THE ORIGINS OF THE NATIONAL RECOVERY*

ment of trade associations and other devices for industry self-regulation.⁵⁴ The principal patron of this "associationalist" movement was Herbert Hoover, who, as Secretary of Commerce and President, encouraged the formation of trade associations and professional societies.⁵⁵ A Hoover admirer, Jean Monnet, later renamed the Hoover philosophy "indicative planning" and "made it the basis both for France's post-war planning system and for the European Economic Community."⁵⁶

Hoover's associationalist values strongly influenced the activities of government agencies whose charters nominally committed them to promote competition.⁵⁷ The Federal Trade Commission's 1928 *Annual Report*, for example, reveals the impact of associationalist values on that agency's work:

Never in the history of American business has there been a time when self-regulation has received more intensive consideration If an industry is capable of self-regulation the trade practice conference procedure of the Federal Trade Commission affords the most effective method yet devised to accomplish this end Trade associations, "institutes," the United States Chamber of Commerce, and business organizations in other forms have done, and are doing, excellent work in this respect⁵⁸

The trade practice conference, discussed in the above quotation, was the most important manifestation of associational attitudes in the 1920's.⁵⁹

ADMINISTRATION: BUSINESS, GOVERNMENT, AND THE TRADE ASSOCIATION ISSUE, 1921-1933 (1976).

54. Himmelberg, *The War Industries Board*, *supra* note 46, at 60-61. See also U.S. DEP'T OF COMMERCE, *TRADE ASSOCIATION ACTIVITIES* (1927); FEDERAL TRADE COMM'N, *OPEN PRICE ASSOCIATIONS* (1929); *Trade Associations: Cooperation or Restraint of Trade*, 12 PROC. ACAD. POL. SCI. 3-99 (1926); Hawley, *Herbert Hoover, the Commerce Secretariat, and the Vision of an "Associative State," 1921-1928*, 56 J. AM. HIST. 116, 139 (1974). Hawley estimates that the number of major national associations grew from approximately 700 in 1919 to more than 2,000 in 1929. The number of lesser statewide or regional bodies may have been much larger. See C. WILCOX, *COMPETITION AND MONOPOLY IN AMERICAN INDUSTRY* 225 (1940) (T.N.E.C. Monogram No. 21).

55. Hawley, *supra* note 54; A. SCHLESINGER, *supra* note 30, at 84-89; J. HICKS, *REPUBLICAN ASCENDANCY 1921-1933*, at 12 (1960). Although Hoover supported certain forms of intra-industry coordination, he generally opposed attempts to push such coordination activities beyond the limits established by prevailing Supreme Court antitrust decisions and beyond "the point at which competition and cooperation could be reconciled ideologically." R. HIMMELBERG, *supra* note 53, at 220. Hoover would later denounce the National Recovery Administration's voluntary industry codes as "totalitarian" for their use of government compulsion. P. JOHNSON, *MODERN TIMES* 256 (1983).

56. P. JOHNSON, *supra* note 55, at 243.

57. FEDERAL TRADE COMM'N, *ANNUAL REPORT* 5 (1928) (showing the impact of associationalist values on the Federal Trade Commission); Hawley, *supra* note 54, at 136 (showing the impact of associationalist values on the Department of Justice). See also T. COCHRAN & W. MILLER, *THE AGE OF ENTERPRISE* 345-46 (1942).

58. FEDERAL TRADE COMM'N, *supra* note 57, at 5.

59. The trade practice conference, which began in 1919, went by the name of "trade practice submittal" until 1925. See generally Kittelle & Mostow, *A Review of the Trade Practice Conferences of the Federal Trade Commission*, 8 GEO. WASH. L. REV. 427 (1940).

Industrial Policy

Outwardly designed to suppress “unfair” or “unscrupulous” forms of business behavior, the conferences in practice acted to curb legitimate means of competition. The FTC initiated the conferences by inviting all firms in an industry to meet in the presence of a commissioner and members of the commissioner’s staff to discuss disputed practices within the trade.⁶⁰ When a majority of the conferees opposed some business tactic, the conferees approved resolutions calling for a ban on the suspect practices.⁶¹ If the FTC endorsed the conferees’ views, it could classify the resolutions as either “Group I” or “Group II” rules.⁶² The Commission treated violations of Group I rules as *prima facie* violations of the FTC Act and sought cease and desist orders to halt them.⁶³ For violations of Group II rules, however, the FTC based its decision to prosecute on the circumstances of each claimed infraction.⁶⁴

The trade conference mechanism gradually grew from several meetings per year in the early 1920’s to become one of the Commission’s chief enforcement activities by the end of that decade.⁶⁵ Approximately sixty conferences were held between July 1927 and November 1929.⁶⁶

For some observers, the FTC’s reliance on the conferences displayed a healthy inclination to replace competition-preserving enforcement with co-operation-based policies.⁶⁷ From a consumer welfare perspective, however, the effect of the conferences hinged mainly on whether the rules the Commission endorsed were actually sanctioning or fostering collusion. In this important respect, the Commission failed to protect consumer interests. By the end of the 1920’s, the Commission routinely endorsed codes that tended to restrict output. Arthur Schlesinger’s history of the period states: “Though dedicated to the elimination of ‘unfair’ trade practices, the codes

60. See FEDERAL TRADE COMM’N, TRADE PRACTICE SUBMITTALS 1919 TO 1923 (1923); McCarty, *Trade Practice Conferences*, 2 CORP. PRAC. REV. 19 (1930).

61. For a general discussion of the trade practice conference procedures, see Kittelle & Mostow, *supra* note 59. See also A. BURNS, THE DECLINE OF COMPETITION 69-73 (1936); T. BLAISDELL, *supra* note 41, at 93-98.

62. Kittelle & Mostow, *supra* note 59, at 428.

63. *Id.*

64. *Id.*, at 428-29.

65. T. BLAISDELL, *supra* note 64, at 91-94.

66. *Id.* at 94.

67. In 1930, one former Commission official applauded this shift in emphasis:

The trade practice conference marks the beginning of systematic cooperative effort between various progressive industries and the government to establish and enforce intelligent rules of business conduct. It permits industries to become self-governing through responsible trade organizations whose activities are supervised in the public interest by the Federal Trade Commission It creates among businessmen a more enlightened sense of their responsibility to the public, and it creates . . . in the public a similar sense of its responsibility to permit business interests . . . to conduct business on sound economic principles of cooperative effort as distinguished from destructive competition.

McCarty, *supra* note 60, at 29.

gradually began to spill over into such questions as price-cutting and, in some cases, provided fronts behind which businessmen fraternally conspired to evade the antitrust law."⁶⁸ Many trade agreements were "essentially smoke screens to permit price fixing."⁶⁹ Some codes so alarmed the Justice Department that the Antitrust Division in 1930 called for the FTC to condemn trade agreements that seemed to violate Section 1 of the Sherman Act.⁷⁰ This effort was successful.⁷¹

Once the Great Depression persisted through 1932, however, there emerged substantial pressure for reinstating the authority of the FTC to permit trade groups to fix prices, allocate production, and consummate mergers and acquisitions that were "prohibited or which might be considered prohibited by the Anti-Trust Acts."⁷² The supporters of cooperation between industry and government were concerned that destructive competition was severely inhibiting economic recovery.⁷³

C. *The National Recovery Administration*

The World War I mobilization and the associationalist experiments of the 1920's had given the planners and cooperation advocates important, if limited, tests of their theories. The economic collapse of 1929, however, spurred the ideological descendants of Theodore Roosevelt to promote co-operation-based policies that might have displaced the competition model permanently. Leading War Industries Board members such as Bernard Baruch and Gerard Swope asked that the federal government suspend antitrust laws to permit business self-regulation.⁷⁴ A younger group of academicians and public administrators, including Rexford G. Tugwell, A.

68. A. SCHLESINGER, *supra* note 30, at 65. See also Kittelle & Mostow, *supra* note 59, at 436-38; W. LEUCHTENBURG, *supra* note 47; E. GOLDMAN, *supra* note 30, at 237; T. BLAISDELL, *supra* note 41, at 95-96; T. COCHRAN & W. MILLER, *supra* note 57, at 346, 348; J. CLARK, *THE FEDERAL TRUST POLICY* 231-32 (1931). Clark observed that, in the late 1920's, "[t]he industrialists persisted . . . in their effort to exploit the opportunity they found in the trade practice conference to temper the warfare of industrial competition and they were successful in devising euphemisms for trade-restraining agreements which escaped the attention of the commission . . ." *Id.*

69. C. ROOS, *NRA ECONOMIC PLANNING* 16 (1937). Roos served as Director of Research for the NRA during its two-year existence.

70. *Id.* at 16; E. HERRING, *PUBLIC ADMINISTRATION AND THE PUBLIC INTEREST* 132 (1936); R. HIMMELBERG, *supra* note 53, at 93-98.

71. C. ROOS, *supra* note 69, at 16.

72. *Id.* at 17.

73. E. HAWLEY, *THE NEW DEAL AND THE PROBLEM OF MONOPOLY* 27, 40-41 (1966).

74. See Baruch, *A Plan for the Regulation of Production*, in *A PHILOSOPHY OF PRODUCTION* 93, 101-03 (J. Frederick ed. 1930). Gerard Swope, president of General Electric Corp., proposed the use of trade associations to coordinate industry-wide production and stabilize prices. A government economic council would oversee the associations. Swope was one of several industrialists, including Walter Teagle of Standard Oil of New Jersey and Myron Taylor of U.S. Steel, who wanted government action to adjust production to demand. See also A. SCHLESINGER, *supra* note 30, at 181-82; B. BELLUSH, *THE FAILURE OF THE NRA* 3 (1975).

Industrial Policy

A. Berle, and Gardner Means, supplied the theoretical foundation for policies that would permit government to coordinate economic activity on the basis of plans proposed by each industry.⁷⁵ Finally, the inauguration of Franklin D. Roosevelt in 1933 brought into office a "new Administration, skeptical of the individualism of the past, expressing confidence in a greater degree of collective action, and heralding a 'New Deal'."⁷⁶

The early New Deal drew upon the country's war mobilization and associationalist experiences in its efforts to stimulate economic recovery.⁷⁷ The country embarked upon an unprecedented program of peacetime economic planning in June 1933 with passage of the National Industrial Recovery Act (NIRA).⁷⁸ The statute created the National Recovery Administration (NRA),⁷⁹ which promptly set about procuring trade agreements or "codes" for individual industries covering output, prices, wages, working conditions, investment, and trade practices such as advertising. Within a year the NRA had produced 450 codes covering 5 million employers and 23 million workers.⁸⁰

75. See A. BERLE & G. MEANS, *THE MODERN CORPORATION AND PRIVATE PROPERTY* (1932); R. TUGWELL, *THE INDUSTRIAL DISCIPLINE AND THE GOVERNMENTAL ARTS* (1933). For a discussion of the influence of these works upon the evolution of business-government cooperation theories in the early 1930's, see W. LEUCHTENBURG, *FRANKLIN D. ROOSEVELT AND THE NEW DEAL*, 34-35 (1963); A. SCHLESINGER, *supra* note 30, at 190-97.

76. L. LYON, P. HOMAN, G. TERBORGH, L. LORWIN, C. DEARING & L. MARSHALL, *THE NATIONAL RECOVERY ADMINISTRATION* 3 (1935) [hereinafter cited as L. LYON].

77. A. SCHLESINGER, *THE COMING OF THE NEW DEAL* 87-94 (1959) R. HIMMELBERG, *supra* note 53, at 181-82; W. LEUCHTENBURG, *supra* note 47, at 41-42; B. BELLUSH, *supra* note 74, at 14, 16, 45; L. GALAMBOS, *COMPETITION AND COOPERATION: THE EMERGENCE OF A NATIONAL TRADE ASSOCIATION*, 201-02 (1966). See generally E. HAWLEY, *supra* note 73.

78. Act of June 16, 1933, Pub. L. No. 67, ch. 90, 48 Stat. 195 (1933). "It is hereby declared to be the policy of Congress to . . . provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources."

The Reconstruction Finance Corporation (RFC) was another New Deal program with implications for the present industrial policy debate; however, it was not involved in the tripartite microeconomic planning with which this article is concerned. The RFC began operations in January 1932 under the Hoover Administration. The program operated both as a source of funds to aid failing banks and as an investment bank to stimulate business, particularly small business. Although it apparently helped preserve many struggling banks, the RFC "failed" many small businesses "in their hour of need." C. ROOS, *supra* note 69, at 393. The RFC program played only a small role as an investment bank in the 1930's; it had little or no impact on economic recovery.

79. The NIRA authorized President Roosevelt to establish "such agencies . . . as he may find necessary" to effectuate the policies of the Act. Act of June 16, 1933, Pub. L. No. 67, ch. 90, 48 Stat. 195 (1933). The NRA was established by executive order pursuant to Title I of the NIRA. Exec. Order No. 6173 (1933); Exec. Order No. 6205-A (1933).

80. C. ROOS, *supra* note 69, at ix. The NRA appears to have modelled its code program on the FTC's trade practice conference procedure. See A. BURNS, *THE DECLINE OF COMPETITION* 463 (1936); see generally, R. HIMMELBERG, *supra* note 53.

In promoting the bill, President Roosevelt stressed the importance of joint business and government efforts to restore prosperity. For example, on May 4, 1933, six weeks before the NIRA was passed, he told an approving audience at the United States Chamber of Commerce:

You and I acknowledge the existence of unfair methods of competition, of cutthroat prices and of general chaos. You and I agree that this condition must be rectified and that order must be restored. The attainment of that objective depends on your willingness to co-operate with one another to that end, and also your willingness to co-operate with your Government.⁸¹

In signing the legislation President Roosevelt urged businesses to "band themselves faithfully in . . . modern guilds" and to unite in a "great spontaneous co-operation to put millions of men back to work in their regular jobs."⁸² The President said: "We are relaxing some of the safeguards of the antitrust laws. . . . [W]e are putting in place of old principles of unchecked competition some new government controls"⁸³

Reaction on Wall Street to the introduction of the recovery legislation generally had been bullish.⁸⁴ To many in the business community, industry-wide codes designed to bar price-cutting and increase profits would be a *quid pro quo* exchanged for labor's right to boost wages through collective bargaining.⁸⁵ The bill had enjoyed broad support from what a 1935 Brookings Institution study called "[a] curious combination of . . . reform

81. Address by President Roosevelt to the U.S. Chamber of Commerce (May 4, 1933), *quoted in* C. ROOS, *supra* note 69, at 41.

82. F. ROOSEVELT, STATE OF POLICY ON INDUSTRIAL RECOVERY ACT (June 16, 1933) *quoted in* C. ROOS, *supra* note 69, at 53. The theme of "cooperation" soon emerged throughout what Hawley called a "whole set of favorable collectivist symbols" to herald the ascendancy of coordination strategies over competition-oriented policies. Hawley observed:

New Deal and business spokesmen wrought a virtual revolution in popular symbolism. "Competition" became "economic cannibalism" and "rugged individualists" became "industrial pirates." Conservative industrialists, veteran antitrusters, and classical economists were all lumped together and branded "social Neanderthals," "Old Dealers," and "Corporals of Disaster." The time-honored practice of reducing prices to gain a larger share of the market became "cut-throat and monopolistic price slashing," and those that engaged in this dastardly activity became "chiselers." Conversely, monopolistic collusion, price agreements, proration, and cartelization became "cooperative" or "associational" activities—and devices that were chiefly designed to eliminate competition bore the euphemistic title, "Codes of Fair Competition."

E. HAWLEY, *supra* note 73, at 54.

83. F. ROOSEVELT, STATE OF POLICY ON INDUSTRIAL RECOVERY ACT (June 16, 1933), *quoted in* C. ROOS, *supra* note 69, at 53.

84. C. ROOS, *supra* note 69, at 43-45; E. HAWLEY, *supra* note 73, at 26-28.

85. C. ROOS, *supra* note 69, at 234; B. BELLUSH, *supra* note 74, at 16-17, 28. Within the business community there was opposition to the NRA from smaller firms seeking to enter or expand in selected industries and from firms whose operations had been largely profitable. R. HIMMELBERG, *supra* note 53, at 221-22; L. GALAMBOS, *supra* note 77, at 226.

Industrial Policy

groups, business groups, and labor groups, each seeing in the developing bill an opportunity to promote ends of its own.”⁸⁶

The NRA allowed participation of three principal groups in its code-making deliberations: In addition to the Administrator and his deputies, the NRA had a Consumer Advisory Board, a Labor Advisory Board, and an Industrial Advisory Board. In theory, each industry’s “code” was to be set in a “forum of cooperation” in which the NRA planner would steer “unselfish” group interests toward mutually satisfactory agreements.⁸⁷ In practice, this “idealized version” yielded to the “realities of an out and out bargaining process, in which selfish interests were played against one another.”⁸⁸

The dominant members of the tripartite coalitions were the trade associations. An NRA release noted that the new law’s relaxation of anti-trust strictures had given the associations a new importance. It said, “They are almost a part of the government and they can do and agree to many more things than they could do before.”⁸⁹ A Brookings study described the new efforts of the associations to free their members from the hostile forces of competition:

[C]ommittees of business men were crowding into Washington and staying for weeks and months for the privilege of increasing their costs by raising wages and reducing hours of work. For the most part, they were there to secure a sufficient *quid pro quo*, hoping (as against official pronouncements) that the *quid* would sufficiently outweigh the *quo* to make the effort worthwhile in terms of profits. The imaginations of groups of business men were fired by the prospect of removing or mitigating the competitive handicaps to which they so largely attributed the unhappy absence of profits.⁹⁰

Indeed, the “central motivating force” of the trade associations was the

86. L. LYON, *supra* note 76, at 7. See also E. HAWLEY, *supra* note 73, at 33 (“Within the confines of a single measure, . . . the formulators of the National Industrial Recovery Act had appealed to the hopes of a number of conflicting pressure groups”).

Not everyone, however, embraced the new legislation. “Opposition to the proposal,” Hawley wrote, “came from antitrusters and small business liberals, men who stressed the evils of monopoly and were reluctant to abandon the competitive tradition.” *Id.* at 29. Among the leading intellectual opponents of the bill were architects of and successors to Woodrow Wilson’s New Freedom program. Justice Louis Brandeis, whom Wilson had appointed to the Supreme Court, attacked in his correspondence the proposed bill because of “the impossibility of enforcement, the dangers to the small industries, the inefficiency of the big unit, be it governmental or private.” N. DAWSON, LOUIS D. BRANDEIS, FELIX FRANKFURTER, AND THE NEW DEAL 66 (1980).

87. L. LYON, *supra* note 76, at 83–85.

88. *Id.* at 85.

89. *Id.* at 89, n.7, (quoting NRA Release No. 11, June 25, 1933); see also, E. HAWLEY, *supra* note 73, at 55–62; B. BELLUSH, *supra* note 74, at 45; R. HIMMELBERG, *supra* note 53, at 211.

90. L. LYON, *supra* note 76, at 91–92.

desire to improve prices and profits by "collective action."⁹¹ Labor groups, too, were pleased to secure a *quid pro quo* in the form of higher wages, and government administrators no doubt enjoyed their newly found power over commerce and trade.

These gains to business, labor, and government interests, however, frequently came at the expense of consumers. The government planners, "hungrily seeking new fields to conquer, seized upon any reason for extending their domain."⁹² For example, the NRA granted monopolies to the copper and petroleum industries in the name of environmental preservation as well as national defense.⁹³ In addition to the deliberate creation of monopolies, moreover, NRA administrators readily acquiesced in numerous code provisions that facilitated "monopolistic or semi-monopolistic prices."⁹⁴ Some codes fostered extensive and explicit collusion among bidders for state, local, and federal government contracts, thereby raising profits for the favored firms.⁹⁵ Others facilitated clandestine price-fixing⁹⁶ and restricted interregional product shipments.⁹⁷ The glass container industry received an especially strong code as a reward for helping the government enforce the liquor revenue laws.⁹⁸ And restrictions on timber production guaranteed prices equal to several times the replacement value of the timber.⁹⁹ The codes of the timber, copper, and glass container industries all "had their origin in pre-code price-fixing activities of the groups concerned."¹⁰⁰

All such practices led to "consumer gouging."¹⁰¹ They also harmed smaller firms because the larger firms dominated the code-making deliberations.¹⁰² Moreover, although NRA activities successfully raised profits and wages for many of the favored firms and their employees, the agency substantially impeded recovery from the Depression.¹⁰³ In 1935, when the

91. *Id.* at 94. See also E. HAWLEY, *supra* note 73, at 56-62.

92. C. ROOS, *supra* note 69, at 360.

93. *Id.* at 354-58, 359.

94. *Id.* at 373.

95. *Id.* at 323.

96. *Id.* at 289; E. HAWLEY, *supra* note 73, at 57-61.

97. C. ROOS, *supra* note 69, at 372-73.

98. *Id.* at 360.

99. *Id.* at 250.

100. *Id.* at 360; see also L. GALAMBOS, *supra* note 77, at 201-02 (discussing the application of the NRA codes to the cotton textile industry).

101. C. ROOS, *supra* note 69, at 467.

102. *Id.* at 416; L. LYON, *supra* note 76, at 745; W. LEUCHTENBURG, *supra* note 47, at 69.

103. C. ROOS, *supra* note 69, at 415-16; L. LYON, *supra* note 76, at 873-76; N. DAWSON, *supra* note 86, at 65, 73 (concluding that the NRA "retarded" recovery). See also E. HAWLEY, *supra* note 73, at 131-32; A. SCHLESINGER, *supra* note 77, at 172-76; B. BELLUSH, *supra* note 74, at 61-64, 70-71, 80-82, 140, 144, 149-50, 161, 165-67. Bellush records criticism of the NRA's output restricting effects by Brookings Economist George Terborgh and John Maynard Keynes. B. BELLUSH, *supra* note 74, at 63-64, 144. Bellush writes that Keynes, who argued that the NRA had been put across too

NRA was effectively abolished by a Supreme Court decision,¹⁰⁴ the unemployment rate stood at 20 percent.¹⁰⁵ This figure was less than the rate inherited by the Roosevelt Administration, but was more than six times the rate in 1929.¹⁰⁶ In the words of Charles F. Roos, who had served as the NRA's Director of Research, the Court's action had "destroyed the monstrosity, that during 1934 and 1935 had kept business in a churn, prevented reemployment, and consequently retarded economic development."¹⁰⁷

The lesson for future students of industrial policy was clear: Attempts at economic planning would deteriorate into nothing more than bargaining between economic groups. Monopolistic advantages would be exchanged for labor concessions, with the choicest gains flowing to the groups exhibiting the greatest political power. As Roos concluded two years after the NRA's demise: "To trust the economic order to such 'planners' would be rash indeed; there would be a greater chance that they would reduce it to chaos than that a baby handed a watch and hammer would smash the watch."¹⁰⁸

Although the NRA was the most far-reaching industrial policy pursued in the 1930's, it was not the only such policy. The economic collapse gave rise to a wide range of programs designed to rescue various industries from the effects of "cutthroat" competition. In the natural resource and transportation fields, Congress enacted legislation which effectively converted otherwise competitive industries into highly regulated, cartelized, and often inefficient industries.¹⁰⁹ In the transportation field, the jurisdiction of the Interstate Commerce Commission was extended to trucking,¹¹⁰ and the Civil Aeronautics Board was established¹¹¹ to employ government-sponsored cooperation in awarding routes and setting prices. A large

hastily "in the false guise of being part of the technique of recovery," criticized the NRA's attempt to raise prices "by deliberately increasing prime costs or by restricting output. . ." B. BELLUSH, *supra* note 74, at 63-64.

104. On May 27, 1935, the Supreme Court struck down the NIRA on the ground that the statute was an unconstitutionally broad delegation of legislative power. *Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935). Only months earlier, the Court had invalidated the NRA's "hot oil" provisions on similar grounds. See *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935). On the day of the *Schechter* decision, Justice Brandeis told newspaper reporters that May 27, 1935, was "the most important day in the history of the Court and the most beneficent." Thomas Corcoran, one of President Roosevelt's advisors, later noted that, following *Schechter*, Brandeis said, "This is the end of this business of centralization, and I want you to go back and tell the President that we're not going to let this government centralize everything." N. DAWSON, *supra* note 86, at 129.

105. See BUREAU OF THE CENSUS, *supra* note 2, at 135.

106. See *id.*

107. C. ROOS, *supra* note 69, at 472.

108. *Id.* at 467.

109. See, e.g., E. HAWLEY, *supra* note 73, at 205-80.

110. See *supra* note 26.

111. Civil Aeronautics Act of 1938, Pub. L. No. 75-706, 52 Stat. 973.

body of literature has demonstrated that many of these cooperative ventures produced tremendous social costs in the form of higher prices and resource misallocation.¹¹² Indeed, only within the past decade have some of the chief regulatory measures of the 1930's been repealed or substantially modified to permit greater reliance on market forces.¹¹³ These reforms have produced substantial gains for the general public.¹¹⁴

III. Contemporary Industrial Policies

At the heart of the current industrial policy debate is the assertion that, through tripartite (business, labor, and government) cooperation, government can "guide" leading industries to successful growth opportunities.¹¹⁵ Proponents of industrial policy point to "indicative planning" policies in other leading industrial nations, including France, West Germany, and Japan as evidence of the benefits of coordinated action.¹¹⁶ The experiences of these countries, however, like U.S. experience with the NRA,¹¹⁷ provide little support for more centralized coordination.

A. Indicative Planning Policies of Japan

The "miracle" of "Japan, Inc."¹¹⁸ is frequently offered as an example of the benefits of coordinated policies.¹¹⁹ Japan's Ministry of International

112. See, e.g., G. DOUGLAS & J. MILLER III, *ECONOMIC REGULATION OF DOMESTIC AIR TRANSPORT: THEORY AND POLICY* (1974); Eads, *Competition in the Domestic Trunk Airline Industry: Too Much or Too Little?* in *PROMOTING COMPETITION IN REGULATED MARKETS* 13 (A. Phillips ed. 1975); Moore, *Deregulating Surface Freight Transportation*, in *PROMOTING COMPETITION IN REGULATED MARKETS* 55 (A. Phillips ed. 1975); S. BREYER, *REGULATION AND ITS REFORM* (1982).

113. See, e.g., Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895 (partially deregulating railroads); Natural Gas Policy Act of 1978, Pub. L. No. 95-621, 92 Stat. 3350 (partially deregulating natural gas producers); Airline Deregulation Act of 1978, Pub. L. No. 95-504, 92 Stat. 1705 (partially deregulating airlines); and Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793 (partially deregulating trucking).

114. See, e.g., OFFICE OF ECONOMIC ANALYSIS, CIVIL AERONAUTICS BOARD STAFF REPORT, *COMPETITION AND THE AIRLINES: AN EVALUATION OF DEREGULATION* (authored by D. Graham & D. Kaplan, 1982); OFFICE OF TRANSPORTATION ANALYSIS, INTERSTATE COMMERCE COMMISSION, *THE INTERCITY BUS INDUSTRY* (1984); Babcock, *Efficiency and Adjustment: The Impact of Rail Deregulation*, 33 CATO INSTITUTE POLICY ANALYSIS (1984); Moore, *Rail and Truck Reform—The Record So Far*, REGULATION, Nov.-Dec. 1983, at 33, 36.

115. See, e.g., I. MAGAZINER & R. REICH, *supra* note 6, at 377.

116. See, e.g., Weil, *U.S. Industrial Policy: A Process in Need of a Federal Industrial Coordination Board*, 14 LAW & POLICY IN INT'L BUS. 981, 1004-06 (1983); Krauss, "Europeanizing" the U.S. Economy: *The Enduring Appeal of the Corporatist State*, in *THE INDUSTRIAL POLICY DEBATE* 71-90 (C. Johnson ed. 1984).

117. See *supra* text accompanying notes 74-114.

118. "Japan, Inc." is a phrase commonly used by writers on Japan to denote the close ties between Japanese companies and their government. See, e.g., Ohmae, *Japan vs. Japan: Only the Strong Survive*, Wall St. J., Jan. 26, 1981, at 20, col. 1. For a critique of "Japan, Inc." see T. SAKIYA, *HONDA MOTOR: THE MEN, THE MANAGEMENT, THE MACHINES* 137-38 (1982).

119. See, e.g., C. JOHNSON, *MITI AND THE JAPANESE MIRACLE: THE GROWTH OF INDUSTRIAL POLICY, 1925-1975* at 30-32, 305-24 (1982); Weil, *supra* note 116, at 1004, 1033-38.

Trade and Industry (MITI) and the Bank of Japan have sought to facilitate coordinated activities among competing Japanese firms.¹²⁰ As a major element of its coordination efforts, MITI has sought to “cartelize and rationalize” several industries, sharing with them its “visions” of their competitive futures and providing them for a time with substantial import protection from foreign competition.¹²¹

However, it is hardly clear that policies emphasizing cooperation and joint planning have played a significant role in promoting Japan’s phenomenal economic growth.¹²² Indeed, there is considerable evidence that Japan’s efforts to concentrate Japanese industry and coordinate firms’ strategic behavior have frequently failed or produced unintended results. For example, in a seven-year period during which MITI attempted to concentrate Japan’s cotton spinning industry, the 10-firm concentration ratio fell from 89 to 50 percent.¹²³ In spite of MITI’s efforts to consolidate Japan’s emerging auto industry, the number of significant firms grew from three to nine.¹²⁴ And MITI’s effort to concentrate the Japanese computer industry’s six firms into a single firm the equivalent of IBM never got off the ground.¹²⁵

Many of the most successful Japanese industries, both concentrated and unconcentrated, have consisted of vigorously independent firms. For example, as mentioned above, Japanese auto companies successfully opposed MITI’s merger efforts¹²⁶ and refused to heed the government’s early advice to forego export sales;¹²⁷ they also resisted MITI’s efforts to allocate sales and limit their export production to a “people’s car.”¹²⁸ When the government sought to ban certain forms of non-price competition in the pharmaceutical industry, fierce price competition erupted.¹²⁹ Sony resisted

120. To quote two leading authorities on Japanese industrial policies:

An important if fluid role in coordinating the actions of rival sellers has been played by agencies of the Japanese government, particularly the Ministry of International Trade and Industry. In a number of industries MITI has taken an active hand to promote coordination directly through “administrative guidance.” The practice is without explicit statutory authority or legalistic procedure—it would be unthinkable in the United States, and is at least somewhat controversial in Japan’s less legalistic political system.

R. CAVES & M. UEKUSA, *INDUSTRIAL ORGANIZATION IN JAPAN* 53–54 (1976).

121. E. KAPLAN, U.S. DEPT OF COMMERCE, *JAPAN: THE GOVERNMENT-BUSINESS RELATIONSHIP* 16, 39, 85 (1972).

122. See Trezise, *Industrial Policy is Not the Major Reason for Japan’s Success*, 2 *BROOKINGS REV.* 13–18 (Spring 1983); Sakoh, *Industrial Policy: The Super Myth of Japan’s Super Success*, HERITAGE FOUND. (July 13, 1983).

123. R. CAVES & M. UEKUSA, *supra* note 120, at 55.

124. E. KAPLAN, *supra* note 121, at 108, 128; see also T. SAKIYA, *supra* note 118 at 134–137.

125. *ECONOMIST*, July 18, 1981, at 13.

126. R. CAVES & M. UEKUSA, *supra* note 120, at 151; Sakoh, *supra* note 122, at 12.

127. W. DUNCAN, U.S.-JAPAN AUTOMOBILE DIPLOMACY: A STUDY IN ECONOMIC CONFRONTATION 73–74 (1973); Etzioni, *The Mitization of America?*, *PUB. INTEREST*, Summer 1983, at 46.

128. ETZIONI, *supra* note 127, at 46; E. KAPLAN, *supra* note 121, at 121.

129. R. CAVES & M. UEKUSA, *supra* note 120, at 50.

MITI's efforts to prevent it from bringing transistor technology into Japan.¹³⁰ Indeed, analysts have speculated that MITI's efforts to discourage firms from entering certain industries may have acted on firms as an artificial incentive to enter those industries and share in the expected cartel profits.¹³¹ In short, intense domestic competition has been the primary factor in many of the major Japanese industrial successes. The manufacturers have succeeded in spite of MITI's efforts to guide and coordinate their decisions, not because of those efforts.

Moreover, even if the planning and cooperation model had some relevance in the early post-war period, its current value is questionable. Jiro Tokuyama, dean of the Nomura School of Advanced Management in Tokyo, recently stated:

Coordination is all right if you're building a steel and car industry on the model of other people. But now we're in an era of rapid change, of integrated circuits and microprocessors. . . . I don't think our large organizations can move quickly enough to make the changes. We must find our model among the entrepreneurs like [those] in your Silicon Valley.¹³²

One indication that the planning model may be losing its relevance is that some once-touted examples of successful Japanese planning have come on hard times. Between 1977 and 1982, the Japanese shipbuilding industry lost 46,000 jobs.¹³³ Between 1976 and 1981, imports' share of domestic aluminum sales rose from 24 percent to 56 percent.¹³⁴ Even in steel, where the Japanese supposedly have achieved great success, there is substantial excess capacity. Japanese firms have been calling for the application of Japan's never-used laws prohibiting below-cost sales—"dumping"—by foreign firms.¹³⁵ Today, MITI is actively seeking to reduce overcapacity in many of the very industries it is credited with having created.¹³⁶

In sum, the Japanese government does rely on a greater degree of consensus-building than does the United States government. Much can be learned from this greater degree of harmony among business, labor and government. Nevertheless, the Japanese success story arguably occurred de-

130. Henderson, *The Myth of MITI*, FORTUNE, Aug. 8, 1983, at 113; *A Rising Tide of Protectionism*, NEWSWEEK, May 30, 1983, at 28.

131. R. CAVES & M. UEKUSA, *supra* note 120, at 56.

132. Wash. Post, Apr. 29, 1984, at B1, col. 1.

133. Boyer, *How Japan Manages Declining Industries*, FORTUNE, Jan. 10, 1983, at 60.

134. *Id.* at 62.

135. For example, Japanese petrochemical manufacturers have complained about dumping by U.S. and Canadian firms. See ECONOMIST, Sept. 25, 1982, at 89.

136. See generally Boyer, *supra* note 133.

spite any policies of planning and cooperation, not because of them. The strongest Japanese industries are precisely those in which competition is most vigorous.¹³⁷ Hence the policy implications of the Japanese experience are ambiguous at best.

B. *Indicative Planning Policies of Western Europe*

Like the myth of "Japan, Inc.," popular accounts of the success of indicative planning policies in Western Europe are little more than folk stories. Both in France and in West Germany, attempts at comprehensive planning and coordination have been largely unsuccessful.

The roots of French indicative planning, at least at a theoretical level, reach back to the 18th century mercantilists, whose policies were criticized by Smith and Hume.¹³⁸ This interventionist philosophy proposed that government substitute "cooperation for conflict and competition,"¹³⁹ and that the state be "an active, initiating partner, not a distant policeman. Its role [was] to create the structures of cooperation and through them to guide the economy toward expansion and modernization."¹⁴⁰

In this tradition, the objective of recent French indicative planning policies was "to increase the scale and efficiency of French industrial production"¹⁴¹ and to "construct a series of national champions which would carry the French flag into battle against the foreign giants."¹⁴² To the French planners a "fundamental harmony of interest [existed] between big business and the state."¹⁴³ The paradigmatic French mechanism for achieving industrial growth, therefore, consisted mainly in assembling an elite corps of civil servants insulated from political pressures and sensitive mainly to the desire of "industry to regulate competitive forces."¹⁴⁴ This forum for formulating French industrial policy would exclude "trade un-

137. Ken Ohmae, a leading Japanese executive has stated: "[T]he Japanese government has rarely been able to protect Japanese companies from *other Japanese companies*. And in almost every industry where Japanese companies have done well in export markets, they have honed their teeth in fierce domestic competition." Ohmae, *supra* note 118, at 20, col. 3.

138. One such French mercantilist was Colbert. For a discussion of Colbert's view of mercantilism, see C. COLE, *COLBERT AND A CENTURY OF FRENCH MERCANTILISM* 335-55 (2d ed. 1964). Adam Smith noted that "Mr. Colbert, the famous minister of Lewis XIV . . . had unfortunately embraced all the prejudices of the mercantile system. . . ." A. SMITH, *supra* note 13, at 627. According to Smith, Colbert favored urban industry at the expense of agricultural industry. *Id.* at 628.

139. STAFF OF SUBCOMM. ON ECONOMIC GROWTH AND STABILIZATION OF THE JOINT ECONOMIC COMM., 95TH CONG., 1ST SESS., *RECENT DEVELOPMENTS IN FRENCH PLANNING: SOME LESSONS FOR THE UNITED STATES* 6 (Comm. Print 1977) (authored by S. Cohen) [hereinafter referred to as S. COHEN].

140. *Id.*

141. *Id.* at 20.

142. *Id.* at 21.

143. *Id.* at 6.

144. *Id.* at 6, 7, 21.

ions, consumer groups, small business groups, peasant [agricultural] organizations and [even] Parliament,"¹⁴⁵ although "places [could] be kept at the conference tables for the 'responsible' trade unionists [that] the planned industrial evolution [was] supposed to produce."¹⁴⁶

At first, this approach to industrial policy was nothing more than ideology and had little or no impact on French industry. The first four postwar French "plans" were never taken seriously.¹⁴⁷ However, like the other West European economies, the French economy experienced rapid growth in the postwar period.¹⁴⁸ Many people associated the mythical indicative planning policies with that growth.

The first real test of French planning came with the Fifth Plan, which began in 1966. This Plan included a comprehensive program of "general resource allocation," as well as an incomes policy for labor and a set of targeted investments for business.¹⁴⁹ The plan "failed dramatically"¹⁵⁰ and was aborted in May 1968, midway through its scheduled duration.¹⁵¹ The Sixth Plan, begun in 1970, had the "same basic structure"¹⁵² as its immediate predecessor and quickly met the same fate. The French government killed off the "comprehensive planning" elements of both programs well before it issued the official obituaries.¹⁵³ The reason was simple: No group was willing to cooperate—to give up its *quid pro quo*—"not business, not the middle classes, not the unions, and not the Government."¹⁵⁴

Subsequent to the Sixth Plan, French efforts to spur industrial growth and create a class of international champions have been limited to a case-

145. *Id.* at 7.

146. *Id.*

147. Herbert Stein, as research director for the Committee for Economic Development, was sent to France by President Kennedy in 1962 to "investigate the possibility of improving the performance of the American economy by emulating French planning." Stein recalls that:

Many people were infatuated with French planning at the time. The combination of intellectual rigor, as suggested by the word "planning," and romance, as suggested by the word "French," was extremely tempting. So a group of us went to Paris. We met with officials of the Commissariat du Plan, with French businessmen, and with economists. By the time we returned I had concluded, in a line that I could not get out of my mind: "*Le Plan Francais, il n'existe pas.*" The French government had forecasts about the economy, it made certain interventions in the economy—but it had no plan. It had no blueprint for the desired course of the economy in specific and detailed terms and no machinery for bringing a blueprint into reality if one had existed. The French "plan" was soon enough forgotten by everyone.

Stein, *Don't Fall for Industrial Policy*, FORTUNE, Nov. 14, 1983, at 64.

148. See J.-J. CARRÉ, P. DUBOIS & E. MALINVAUD, FRENCH ECONOMIC GROWTH 24-34 (1975).

149. S. COHEN, *supra* note 139, at 13-16.

150. *Id.* at 14.

151. *Id.*

152. *Id.* at 13-14.

153. *Id.* at 14.

154. *Id.* at 14-15.

Industrial Policy

by-case approach.¹⁵⁵ As in Japan, however, such policies have not been notably successful. The joint British and French Concorde, as well as the French government's attempt to encourage the development of its domestic computer industry, are illustrative examples.¹⁵⁶

The attempts of other West European governments to guide and coordinate the activities of specific industries have not met with any greater success. The West Germans, like their French counterparts, had relied mainly on market forces until the latter 1960's.¹⁵⁷ In the 1970's, however, the West German government attempted to coordinate plans for its computer and nuclear power industries; these efforts have not been successful.¹⁵⁸ In addition, West Germany's once-heralded industrial policy successes in steel, coal mining, and shipbuilding have gone the way of their Japanese counterparts.¹⁵⁹ Overall, in the words of economist Michael Wachter, the West European experience with indicative planning "has just been terrible."¹⁶⁰

Europe's comparatively poor economic performance over the past decade reinforces the suggestion that activist industrial planning policies were not the key to European industrial growth. In general, as the West European economies came to rely more on centralized industrial policies in the 1970's, their economic performance declined both absolutely and relative to the United States.¹⁶¹ Since 1973, industrial growth has risen more rap-

155. *Id.* at 25.

156. See Kahn, *The Relevance of Industrial Organization*, in *INDUSTRIAL ORGANIZATION, ANTI-TRUST, AND PUBLIC POLICY* 16 (J. Craven ed. 1983).

157. Schmidt, *West Germany, Another Industrial Policy Victim*, HERITAGE FOUND. INT'L BRIEFING, Mar. 7, 1984, at 1.

158. *Id.* at 4.

159. *Id.* 5-7.

160. *BUS. WK.*, July 4, 1983, at 61.

161. Chart I shows the absolute and relative 1983 levels of GDP per capita among the major industrial nations. It shows that the U.S. citizen still is substantially better off than citizens of any other major industrialized nation:

Chart I
GDP Per Capita of Leading
Industrial Nations,* 1983

| Country | GDP/Capita | Percent US level = 100 |
|----------------|------------|---------------------------|
| United States | \$13,106 | 100 |
| Canada | 12,104 | 92 |
| Sweden | 11,907 | 91 |
| West Germany | 10,691 | 82 |
| France | 9,961 | 76 |
| Japan | 8,966 | 68 |
| United Kingdom | 8,523 | 65 |
| Italy | 6,133 | 47 |

SOURCE: THE OECD OBSERVER, Mar. 1984, at 22-23.

*As defined in COMMITTEE FOR ECONOMIC DEVELOPMENT, *PRODUCTIVITY POLICY: KEY TO THE NATION'S ECONOMIC FUTURE* (April 1983).

idly in the United States than in any major industrialized West European nation. Of course, other factors such as the OPEC oil embargo undoubtedly impeded European economic growth during this period; we do not claim that increased reliance on planning and cooperation was necessarily the major problem. Nonetheless, there is little or no empirical evidence that industrial planning has led to significant economic growth in Western Europe. Indeed, West European leaders now seem to be retreating from the planning and cooperation model. As Bernard Attali, a socialist intellectual and adviser to French President Mitterand, recently conceded:

It might be argued that the United States would fare considerably worse if, say, 1980 exchange rates had been used to convert other nations' GDPs into U.S. dollars. However, the OECD ranking remains unchanged when conversions are made on the basis of "purchasing power parities," as opposed to the limited items entering into foreign trade. (Sweden and Canada were not included in the OECD study.) In the latter comparison, the U.S. level exceeds that of second-place Germany by \$2,226. This second method results in the same rankings for 1980, when the U.S. dollar was not as valuable in foreign exchange. In that year, U.S. per capita GDP exceeded that of Germany by \$1,936 in terms of "purchasing power parities." See OECD OBSERVER, Mar. 1982, at 31-32.

Consider as well the growth in industrial production from 1973 to 1983 for each of the eight nations depicted in Chart II. The countries are listed in the same order as in Chart I: that is, according to size of GDP per capita. The U.S. industrial growth rate is exceeded only by that of Japan. In short, since the OPEC embargo in 1973, the U.S. industrial base, as measured by its index of industrial output, has grown more rapidly than that of any of the major European nations.

Chart II

Percent Growth in Index of Industrial Production
for Eight Leading Industrial Nations, 1973-1983

| Country | Growth % |
|----------------|----------|
| United States | 13.7 |
| Canada | 8.7 |
| Sweden | 5.1 |
| West Germany | 3.3 |
| France | 7.8 |
| Japan | 24.0 |
| United Kingdom | -1.8 |
| Italy | 9.6 |

SOURCE: Based on INTERNATIONAL MONETARY FUND, 37
INTERNATIONAL FINANCIAL STATISTICS (Sept. 1984); INTERNATIONAL
FINANCIAL STATISTICS, 1983 YEARBOOK.

The most telling indication of European economic performance is its failure to match the record of the U.S. economy in generating more than 20 million new jobs in the 1970's. In that period total employment in the European economy rose by approximately 3%, as opposed to a nearly 33% gain for the U.S. economy. In addition, nine out of ten new entrants were able to find jobs in the rapidly expanding U.S. labor force of the 1970's; only three of ten new entrants could find jobs in the European labor force during the same period. See Ostry, *The World Economy in 1983: Marking Time*, 62 FOREIGN AFF. 537 n.6 (1984).

Even as the U.S. rate of unemployment fell from 9.7% in 1982 to 8.2% in 1983, European unemployment rates were continuing their steady rise to 11%—more than three times their rate in 1973. Approximately 18.5 million Europeans were out of work, of which an estimated 33% to 50% were long-term, hard-core unemployed. Only 5% to 8% of the U.S. and Canadian labor force fell into that category. *Id.* at 536. See also Whitman, *Persistent Unemployment: Economic Policy Perspectives in the United States and Western Europe*, in UNEMPLOYMENT AND GROWTH IN THE WESTERN ECONOMIES 14 (A. Pierre, ed. 1984).

Industrial Policy

We know perfectly well that the growth we want depends on the entrepreneurial spirit. . . . Only entrepreneurs create jobs and new opportunities. The world is changing and we are all entering an era of profound decentralization and the entrepreneur. We are now interested in helping people go out there and help themselves.¹⁶²

In summary, any argument that the U.S. government should rely more on policies of planning and coordination cannot draw strong support from the economic successes of Japan and the other Far Eastern free market economies.¹⁶³ That argument, moreover, is substantially weakened by the failure of West European experiments with indicative planning. Obviously, the U.S. government still should strive to promote economic development through sound macroeconomic and microeconomic policies. The government can play a useful role in reconciling seemingly contradictory policies and regulations. Nevertheless, the United States should pursue these objectives without relying upon the centralized industrial policies that have been tried elsewhere. To quote U.S. venture capitalist Peter Brooke: "It's incredible that some Americans are going to heavy state planning when I'm being asked to go to Europe to help them disband theirs. . . . We shouldn't follow their mistakes. Hell, we're the ones with the answers."¹⁶⁴

IV. Political Feasibility of a Centralized Industrial Policy

Even if centralized industrial policies such as those discussed in the previous section had helped other nations, it would not follow that the United States ought to embrace such a policy. As the experience with the NRA suggests, attempts to implement a workable centralized industrial policy would affront some of the most ingrained characteristics of the American political system.¹⁶⁵ Moreover, "success" in overcoming the political obstacles to effective economic planning might impose substantial costs upon the nation's democratic processes and run counter to its tradition of individual liberty.

A. *Political Obstacles*

Advocates of an activist American industrial policy quickly dismiss any suggestion that their proposals would require a serious overhaul of Amer-

162. Wash. Post, Apr. 29, 1984, at B4, col. 5.

163. For an account of the successes of other Far Eastern market economies, see COMM. FOR ECONOMIC DEVELOPMENT, *PRODUCTIVITY POLICY: KEY TO THE NATION'S ECONOMIC FUTURE* 95-106 (1983).

164. Wash. Post, Apr. 29, 1984, at B4, col. 5.

165. See *supra* text accompanying notes 74-114.

ican government.¹⁶⁶ Many of them observe that the basic elements of such a system are already buried in the interstices of tax codes and tariff policies, and scattered about in individual subsidy schemes and regulatory measures. They believe that only a centralized decisionmaking structure needs to be added to transform this existing patchwork into an effective overall strategy.¹⁶⁷

This argument, however, ignores a major fact about the place of centralization in American government. Although unified efforts to achieve clearly defined national goals are essential in times of war, centralized peacetime policymaking is just what the American political system was designed to prevent. Of course it is possible to overdo the argument for "American exceptionalism,"¹⁶⁸ thereby exaggerating the distinctiveness of American patterns. Political obstacles to effective government coordination and guidance of industry plans may exist to some degree in all democratic countries—as the Mitterand government in France has been discovering. Nevertheless, the political and institutional obstacles to a coherent industrial policy in this country are derived from some of the most pronounced and deep-rooted features of the American political system. Together they make it even less likely that the U.S. government could implement a successful industrial policy based largely on central planning and tripartite coordination.

Four related characteristics of the American political system would impede the success of any such policy: the extraordinary range and diversity of organized interest groups in the United States, the unusually accessible character of American political institutions, the absence of a well-established administrative elite, and the activist role of American courts.

1. *Profusion of Interest Groups*

The extraordinary profusion of interest groups in the United States is not a recent development or a chance phenomenon, but reflects the unusually diverse backgrounds of the American population and the dynamic character of American society. The proliferation of discrete interest groups can be traced back to the writings of the Founders. *The Federalist* argued that political debate could rarely be expected to rise above the clash of selfish factions and praised the federal union precisely for embracing numerous factions; thus diluting the strength of any particular interest: "Ex-

166. See, e.g., I. MAGAZINER & R. REICH, *supra* note 6, at 379–80.

167. See, e.g., I. MAGAZINER & R. REICH, *supra* note 6, at 235, 243–44; *Do Modern Times Call For an Industrial Policy?: A Conversation with Herbert Stein and Lester Thurow*, *supra* note 6, at 6.

168. "American exceptionalism" is a term applied by some historians to the development of values and institutions in the United States. See N. LEVIN, *WOODROW WILSON AND WORLD POLITICS* 3 (1968); L. HARTZ, *THE LIBERAL TRADITION IN AMERICA* (1955).

Industrial Policy

tend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens.”¹⁶⁹

In the 1830's, Alexis de Tocqueville marveled at the alacrity with which Americans formed political associations to take up passing causes, noting that “this powerful instrument of action has been applied to more varied aims in America than anywhere else in the world.”¹⁷⁰ Foreign observers are still struck by the organizing energy of Americans. Most Western countries, for example, have solicitations for several medical charities. In the United States, however, fundraising campaigns exist for hundreds of diseases, while some even have distinct lobbies for government assistance.

As observers of regulatory policymaking in Washington will recognize, this American passion for political organizing has serious ramifications for industrial policy. Proponents of a “coordinated” industrial policy invariably stress the advantages of government-sponsored consensus between “business” and “labor”¹⁷¹—as if these abstract entities could confer around an intimate little table. In Western Europe, a few powerful union leaders or trade association spokesmen might be accepted as authentic representatives of vast industrial constituencies. In the United States, however, one who claims to speak for “business” or “labor” often finds intense opposition from others in the same group who seek contrary objectives. The Federal Trade Commission, for example, is often confronted with pleas by one business organization, frequently supported by its employees, challenging a merger or marketing policy of another. Small businesses, which unlike their larger competitors frequently employ unorganized labor, often oppose the positions of larger businesses in the same trade. Within the same industry, businesses and their employees who stand to gain from a particular government program are opposed by those businesses and workers who stand to lose from the program. Opposition also can come from other industries that might be adversely affected.

In sum, the United States teems with entrepreneurial talent and ambition, both in politics and in business. This babble of competing voices simply cannot be orchestrated into the kind of harmony required for a coherent, consistent industrial policy. It is highly doubtful that Americans would accept the degree of subordination to “larger” interests which would be necessary to make such a policy successful.

169. THE FEDERALIST NO. 10, at 83 (J. Madison) (C. Rossiter ed. 1961).

170. A. DE TOCQUEVILLE, DEMOCRACY IN AMERICA 174 (G. Lawrence trans. 1966).

171. See, e.g., R. REICH, *supra* note 6, at 276.

2. *Accessibility of Political Institutions*

This fragmentation of interests is exacerbated by the second characteristic of the American political system: the unusual accessibility of our governing institutions to factional pressures. State and local governments provide promotional platforms and mechanisms for obstruction that have few counterparts in the centralized systems of Western Europe.¹⁷² Local and regional interests strain both major parties, neither of which has the capacity to impose much discipline, even within their congressional delegations.¹⁷³ Power in Congress is diffused among numerous rival committees and, in recent years, has been further diffused among even more numerous subcommittees.¹⁷⁴

Moreover, the separation of powers mandated by the Constitution ensures a continual tension between the executive and legislative branches, a tension which produces additional accessibility. In contrast to the parliamentary systems of Western Europe and Japan, the American system affords little assurance that the legislative proposals of the Executive Branch actually will be enacted and virtually guarantees that they will not be enacted without considerable compromise and modification.¹⁷⁵ The system also ensures that once a measure is enacted by Congress, its implementation by the executive will be subject to continuous pressures by an array of oversight and appropriations committees, each with its own set of concerns.¹⁷⁶ Within the Executive Branch itself, agencies with related responsibilities are pulled in varying directions by their constituencies and their champions and critics in Congress.¹⁷⁷ The White House and the Office of Management and Budget (OMB) find that "coordinating" policy among different agencies is not always in their interest and is often beyond their

172. See D. HAIDER, *WHEN GOVERNMENTS COME TO WASHINGTON* 1-45 (1974).

173. See Ranney, *The Political Parties: Reform and Decline*, in *THE NEW AMERICAN POLITICAL SYSTEM* 223-24 (A. King ed. 1978); Ranney, *The President and His Party*, in *BOTH ENDS OF THE AVENUE: THE PRESIDENCY, THE EXECUTIVE BRANCH AND CONGRESS IN THE 1980S* 131-53 (A. King ed. 1983) [hereinafter cited as *BOTH ENDS OF THE AVENUE*].

174. L. DODD & R. SCHOTT, *CONGRESS AND THE ADMINISTRATIVE STATE* 111 (1979); Davidson, *Subcommittee Government: New Channels for Policy Making*, in *THE NEW CONGRESS* 99-133 (T. Mann & N. Ornstein eds. 1981).

175. See Ornstein, *The Open Congress Meets the President*, in *BOTH ENDS OF THE AVENUE*, *supra* note 173, at 185-211; Jones, *Presidential Negotiation with Congress*, in *BOTH ENDS OF THE AVENUE*, *supra* note 173, at 96-130.

176. See Schick, *Politics Through Law: Congressional Limitations on Executive Discretion*, in *BOTH ENDS OF THE AVENUE*, *supra* note 173, at 154-84.

177. See Nadel, *Making Regulatory Policy*, in *MAKING ECONOMIC POLICY IN CONGRESS* 240-43 (A. Schick ed. 1983); see also R. NOLL & B. OWEN, *THE POLITICAL ECONOMY OF DEREGULATION: INTEREST GROUPS IN THE REGULATORY PROCESS* 155-62 (1983).

capacity.¹⁷⁸ Merely establishing an interagency coordinating mechanism can trigger crippling administrative jockeying and political dispute.¹⁷⁹

The significance of this political accessibility for any attempt to guide and coordinate industry plans should be obvious to anyone who has followed a few policy battles in Washington. Advocacy groups often make their pitches to several different agencies and then appeal unfavorable responses to the White House or OMB, all the while attempting to secure support in Congress. With so many points of entry into the policymaking process, even a distinctly bad idea will keep bouncing back to life, and a good idea will have a hard time preserving enough integrity to affect policy.¹⁸⁰ The chaos in the federal budget process,¹⁸¹ more than sixty years after the institution of "centralized" budgeting controls in the Executive Branch¹⁸² and ten years after the institution of a "centralized" budget committee in Congress,¹⁸³ provides sufficient testimony against the likelihood that a coherent, coordinated industrial policy will emerge.

3. *Absence of an Administrative Elite*

Champions of a centralized policy frequently respond that past experience simply underscores America's need for a trusted, non-partisan coordinating mechanism to guide national industrial policy.¹⁸⁴ This argument fails, however, because of the third distinctive characteristic of the American political system: the absence of a well-established administrative elite. One wonders where the impartial industrial policy directors would come from in America and why anyone—especially Congress—would give them sufficient trust and deference.

There are two related reasons for the absence of a prestigious corps of American administrators. The first is the sweeping power of an American

178. See H. SEIDMAN, *POLITICS, POSITION, AND POWER: THE DYNAMICS OF FEDERAL ORGANIZATION* 200-31 (3d ed. 1980).

179. See Hecla, *One Executive Branch or Many?*, in *BOTH ENDS OF THE AVENUE*, *supra* note 173, at 26-58.

180. See, e.g., Miller, Shughart & Tollison, *A Note on Centralized Regulatory Review*, 43 *PUB. CHOICE* 83 (1984) (decentralized administration will increase the ability of concentrated interests to influence policy outcomes).

181. See generally *THE CONGRESSIONAL BUDGET PROCESS AFTER FIVE YEARS* (R. Penner ed. 1981) (a collection of essays on the current state of the budget process); see also Schick, *The Three Ring Budget Process*, in *THE NEW CONGRESS*, *supra* note 174, at 288-328.

182. Budget and Accounting Act of 1921, ch. 18, 42 Stat. 20; see also J. HICKS, *supra* note 55, at 51 (discussing the Budget and Accounting Act of 1921).

183. Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297 (1974) (codified in scattered sections of 2 U.S.C. and 31 U.S.C.); see also Caiden, *The Politics of Subtraction*, in *MAKING ECONOMIC POLICY IN CONGRESS*, *supra* note 177, at 100, 110-14; Schick, *The First Five Years of Congressional Budgeting*, in *THE CONGRESSIONAL BUDGET PROCESS AFTER FIVE YEARS*, *supra* note 181, at 3, 4-7.

184. See, e.g., I. MAGAZINER & R. REICH, *supra* note 6, at 377-78.

president over administrative appointments. American government agencies have tremendous turnover in top personnel with each new administration, especially compared with Western Europe. A new American president controls several thousand immediate appointments,¹⁸⁵ while only a few dozen administrative posts change with the advent of a new cabinet in West European countries.¹⁸⁶ This "revolving door" at high levels in the bureaucracy virtually assures the existence of informed and experienced figures outside the U.S. government at any given time. Critics of prevailing or emerging policies in this country thus find it relatively easy to recruit "expert witnesses" to bolster their critiques of government policies; this tends to inhibit formation of the consensus among government administrators necessary for a successful coordinated policy.

The second reason for the absence of an administrative elite is the political difficulty of detachment and neutrality in administrative decisionmaking. Even the distinguished members of the Council of Economic Advisers and the Federal Reserve Board rarely have been immune from criticism, and still more rarely have they been free from powerful political pressures. Top officials in Washington almost invariably earned their prestige from past achievements in academe, business or politics, but rarely in careers devoted exclusively to administrative service. Their power typically derives not from their personal reputations for wisdom and experience but from their perceived support in the White House, Congress, or the press. Proximity to these power centers often is enough in itself to provoke partisan suspicion.

Indeed, available evidence suggests that American bureaucrats are more partisan than those in some other countries. For example, surveys of government administrators in Western Europe and the United States found that the U.S. officials reflected a much wider range of ideological orientations.¹⁸⁷ The American bureaucrats met far more often with private interest groups and had far more contact with legislators than did their European counterparts.¹⁸⁸ Detached, neutral administration is not what the American political system encourages, nor, by and large, what it delivers.¹⁸⁹

185. See Nathan, *The Reagan Presidency in Domestic Affairs*, in *THE REAGAN PRESIDENCY, AN EARLY ASSESSMENT* 48, 71-72 (F. Greenstein ed. 1983); H. HECLO, *A GOVERNMENT OF STRANGERS* 36-41 (1977).

186. See B. PETERS, *THE POLITICS OF BUREAUCRACY: A COMPARATIVE PERSPECTIVE* 222-23 (1978).

187. J. ABERBACH, R. PUTNAM & B. ROCKMAN, *BUREAUCRATS AND POLITICIANS IN WESTERN DEMOCRACIES* 169 (1981).

188. *Id.* at 228-36.

189. *Id.*

One cannot, moreover, comfortably assume that an American industrial policy apparatus would somehow lend independent prestige to its political chiefs. Joseph Schumpeter has observed: "A good bureaucracy is a slow growth and cannot be created at will."¹⁹⁰ The prestigious and self-confident bureaucracies in Western Europe and Japan became established before the advent of full parliamentary politics.¹⁹¹ In the United States, by contrast, democratic politics appeared first. Politicians in the United States thus do not stand in awe of the new bureaucracies they have created and nurtured in recent decades.

Largely for want of a respected corps of impartial administrators, therefore, administration of this nation's industrial policy likely would face some of the same political problems encountered in existing programs. Politicians could not be expected to keep their hands off the new industrial policy bureaucracy, given the vast economic stakes involved and the enormous array of conveniently divisible decisions directly affecting so many diverse constituencies. In this regard, the NRA experience discussed earlier provides little reassurance. A more recent experience with coordinated planning—defense procurement—also does not inspire confidence.¹⁹² Although defense procurement is vital to the national interest and has been entrusted largely to an elite group of military officials, decisions on weapons systems and military supplies often are plainly and powerfully influenced by the interests of particular congressmen in securing financial benefits for their home states or districts.¹⁹³ Such Congressional involvement in the day-to-day implementation of industrial policy would seriously jeopardize the independence and neutrality of the responsible executive entity.

4. *Activist Courts*

The courts provide yet another source of fragmentation in the American system and, hence, another potential impediment to the success of any American industrial policy. Judges and lawyers play a far more active role in government policymaking in the United States than in any other country in the world. In part, this pattern reflects the fragmented and

190. J. SCHUMPETER, *CAPITALISM, SOCIALISM AND DEMOCRACY* 390 n.14 (3d ed. 1975).

191. For a discussion of the emergence of bureaucracies in Western Europe, see A. DE TOCQUEVILLE, *THE ANCIEN REGIME AND THE REVOLUTION* 32-41 (S. Gilbert trans. 1955); F. HAYEK, *THE CONSTITUTION OF LIBERTY* 193-204 (1972); A. HEIDENHEIMER, *THE GOVERNMENTS OF GERMANY* 7, 68, 90-91 (1966). For a discussion of the origins of Japan's bureaucracy, see E. REISCHAUER & J. FAIRBANK, *EAST ASIA, THE GREAT TRADITION* 611-13 (1960).

192. The B-1 bomber program is one recent experience which shows that considerations not limited to national security can affect the development of an arms system. See, e.g., *U.S. NEWS & WORLD REPORT*, July 11, 1983, at 34-35.

193. J. FOX, *ARMING AMERICA: HOW THE U.S. BUYS WEAPONS* 83-84 (1974).

highly competitive character of U.S. politics and the tenuous standing of the administrative organs discussed above. These conditions encourage losers of policy battles to seek another round of struggle in the courts, and often prompt judges to cast a suspicious eye on the winners. The tradition of the American judiciary as a constitutional champion of minorities also encourages this enlarged role of courts and formal proceedings in American policymaking. The result is plain: To an extent unknown in Western Europe or Japan, American administrators must specify precise standards, articulate their policy rationales, supply detailed evidence justifying their decisions, and observe the elaborate niceties of correct procedure.¹⁹⁴ This system may give American lawyers and their clients more confidence in the fairness of resulting administrative decisions. However, it does not promote efficient or flexible, much less "coordinated," administrative decisionmaking.

In short, the American system of government is itself responsible for a number of market distortions that reduce industrial competitiveness and retard economic growth. Efforts to "reform" that system through reliance on comprehensive planning and cooperation, however, would probably fall victim to the very forces that created those distortions. As the NRA and West European programs of industrial planning have shown, such efforts diminish industrial competitiveness and retard economic growth.

B. Implications for Democratic Institutions

Even if the political obstacles to an effective, centralized industrial policy could be overcome, however, the potential political and moral costs of this achievement are sobering. These obstacles—and hence the costs of overcoming them—are especially serious because centralized industrial policy would have an extraordinarily broad scope. To overcome the political obstacles, the government, at a minimum, would have to: (1) create a broad-based, enduring perception of national peril, (2) delegate vast governmental powers to groups of private firms or other special interests, and (3) concentrate an extraordinary amount of power in a small group of government officials. These actions might entail unacceptable costs to the American political system.

The political and moral costs of a centralized industrial policy are directly related to the obstacles which it must surmount. To illustrate the severity of these obstacles, it is useful to contrast industrial policy with some recent issues addressed by presidential commissions. Bipartisan pres-

194. The requirements of correct administrative practice are set forth in the Administrative Procedure Act, 5 U.S.C. §§ 551-559 (1982). Judicial review of decisions reached by administrative agencies is also provided. See 5 U.S.C. §§ 701-706 (1982).

Industrial Policy

idential commissions, established on various occasions to resolve vexing political stalemates, can sometimes formulate widely accepted “package” solutions. President Reagan’s recent commission on the social security financing crisis¹⁹⁵ is an example. However, these commissions are most successful in dealing with discrete, well-defined, and relatively short-term controversies. Commissions that have taken on larger and more open-ended policy controversies, such as the Kissinger Commission on Central America,¹⁹⁶ have had less success in forging political consensus.¹⁹⁷ Industrial policy, by contrast, involves precisely such long-term, open-ended issues. Hence the occasional special commission is not an appropriate model for the political management of industrial policy. A longer-term model, such as the planning experiences of the early New Deal,¹⁹⁸ must be studied instead.

Judging from these precedents, the first requirement for a successful industrial policy is a broad perception of national peril, a perception which would inspire a patriotic spirit of self-sacrifice among diverse economic interests. Even at the depths of the Great Depression, however, such a spirit could not be maintained very long. This failure is one reason why the NRA, after an enthusiastic reception, soon fell prey to bitter and vehement attack.¹⁹⁹ Perhaps only during the world wars was such a spirit maintained for any considerable length of time. But even in wartime the government reinforced the public’s evident perception of external peril with a continual blare of patriotic propaganda. The government would have difficulty promoting such a self-sacrificing spirit in a prosperous peacetime period, because critics of industrial policy could plausibly argue that even the partial, short-term sacrifices imposed by such a policy were not really necessary. Almost inevitably, the managers of industrial policy would require a continuous din of supporting propaganda sufficient to intimidate the critics and silence the skeptics.

The second political requisite of successful industrial policy is a sub-

195. The National Commission on Social Security Reform was established by President Reagan on December 16, 1981. Exec. Order No. 12,335, 46 Fed. Reg. 61,633.

196. The National Bipartisan Commission on Central America was established by President Reagan on July 19, 1983. Exec. Order No. 12,433, 48 Fed. Reg. 33,227.

197. See, e.g., N.Y. Times, Jan. 12, 1984, at A20, col. 1.

198. See *infra* text accompanying notes 199 to 206.

199. See E. HAWLEY, *supra* note 73, at 135-36. Hawley wrote:

Initially the NRA had appealed to a variety of conflicting economic and ideological groups, each bent upon implementing its own theory of recovery and its own vision of the good society. . . . Success in achieving all [of the groups’] goals was impossible; but in the beginning, the conflicts could be and were glossed over by a high-pressure propaganda campaign. The difficulty came when the propaganda wore off, the sense of impending national disaster passed, and the great cooperative effort disintegrated into the original welter of conflicting and quarreling groups.

Id.

stantial delegation of governmental power to well-established groups of private firms or special interests. The NRA codes, for example, although presented as the product of broad-based consultation, actually were promulgated by the established firms and labor organizations in each industry.²⁰⁰ The industry codes, whose promulgation the larger firms typically controlled, tended to discriminate against smaller businesses.²⁰¹ The codes "retarded recovery, injured the wage earner, and interfered with President Roosevelt's efforts to eliminate unemployment."²⁰² They also hampered competition.²⁰³

These effects were not the result of corruption, but an inevitable consequence of the need to secure quick agreements. The easiest means of achieving agreement was to accommodate those with the most economic and political power. During World War I, under more exigent circumstances, the government proceeded in similar ways.²⁰⁴ Price levels, wage rates and cost-plus contract terms were set in agreement with established firms and labor organizations.²⁰⁵

The final requisite of a successful industrial policy is an extraordinary concentration of power in the hands of a small group of government administrators. Such concentration is the only way of maintaining coherence and continuity in a policy that must adapt to many changing particulars. The NRA was administered precisely with such extraordinary and open-ended power, allocated to a central administrative organization without any real guidance from Congress or any real possibility of control by the courts. Justice Cardozo characterized such a system as "delegation run riot" in the Supreme Court decision striking down the NRA.²⁰⁶

Even if these three conditions were satisfied, industrial policy would have a dubious chance of success. It is equally doubtful, moreover, that many Americans concerned about traditional democratic values would wish to see the policy succeed on such terms. Thomas Jefferson provided an emphatic warning about the threat of centralized government to individual liberty:

200. C. ROOS, *supra* note 69, at 68 ("[U]nder the NRA, . . . labor and industry jostled with each other to divide the spoils—the consumer's purchasing power."). See *supra* text accompanying notes 89–91.

201. L. LYON, *supra* note 76, at 745; B. BELLUSH, *supra* note 74, at 140, 149.

202. B. BELLUSH, *supra* note 74, at 144, 166; C. ROOS, *supra* note 69, at 149–51, 472. See *generally*, *supra* note 103, on the ill effects of the NRA.

203. The 1935 Brookings study described the codes in the following manner: "[S]o far as making competition more fair is concerned, the results were negative rather than positive." L. LYON, *supra* note 76, at 743.

204. See *supra* text accompanying notes 46–49.

205. *Id.*

206. *Schechter Poultry Corp. v. United States*, 295 U.S. 495, 553 (1935) (Cardozo, J., concurring); see also B. BELLUSH, *supra* note 74, at 236.

Industrial Policy

No, my friend, the way to have good and safe government, is not to trust it all to one, but to divide it among the many, distributing to every one exactly the function he is competent to. . . . It is by dividing and subdividing [the powers of government] from the great national one down through all its subordinations, until it ends in the administration of every man's farm by himself; by placing under every one what his own eye may superintend, that all will be done for the best. What has destroyed liberty and the rights of man in every government which has ever existed under the sun? The generalizing and concentrating all cares and powers into one body²⁰⁷

Conclusion

Efforts to strengthen the U.S. economy by creating a central administrative body to plan and coordinate a national industrial policy promise to be either ineffective or a cure worse than the perceived disease. Such an approach likely would make U.S. industry less competitive both at home and abroad; it would reduce the nation's standard of living. Even if the centralized approach did foster economic growth in other nations, moreover, it could not succeed in the American political system. The profusion of interest groups, the accessibility of the legislative and executive branches, the lack of an administrative elite, and the activist role of the judicial system in this country would thwart any comprehensive program of coordinated strategic planning. Moreover, any attempt to transplant such an industrial policy to American soil might impose unacceptable costs upon the nation's democratic processes. If the United States is to continue its long-term economic growth while preserving its democratic values, it must look to the principles of economic and political liberalism which the Founders embraced and which have made their American experiment the most successful economic system in history.

207. Letter from Thomas Jefferson to Joseph C. Cabell (Feb. 2, 1816), *reprinted in THE LIFE AND SELECTED WRITINGS OF THOMAS JEFFERSON* 660-61 (A. Koch & W. Peden eds. 1944). The following passage from *The Wealth of Nations* is also pertinent:

The statesman, who should attempt to direct private people in what manner they ought to employ their capitals, would not only load himself with a most unnecessary attention, but assume an authority which could safely be trusted, not only to no single person, but to no council or senate whatever, and which would nowhere be so dangerous as in the hands of a man who had folly and presumption enough to fancy himself fit to exercise it.

A. SMITH, *supra* note 13, at 423.

